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Supreme Court of the United States

OCTOBER TERM, 1953

No. 57

GEORGE LEWIS DICKINSON,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF FOR PETITIONER

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INDEX

Subject Index

	PAGE
Opinion Below	1
Jurisdiction	1-2
Questions presented	2-4
I.	2-3
How involved	2
Question one	2-3
II.	3-4
How involved	3-4
Question two	4
Statutes and regulations involved	4-7
Statement of the case	8-9
The facts	9-14
Specification of errors	14
Summary of argument	14-25
Argument (see Index to Argument below)	26-109
Conclusion	109-110

Index to Argument

One

A proper construction of the statute and the regulation exempts all ministers of all religious organizations preaching, as their vocation, the doctrines of their churches. This exemption prevails regardless of part-time secular activities pursued as an avocation incidental to their ministry. 26-50

I.

A brief discussion of the legislative history behind the 1948 Act shows an intent to make the exemption broad and liberal. 26-28

(1) Exemption in all draft laws similar since 1917 Act 26

(2) The exemption is legislative and for benefit of the people 26

(3) The 1940 Act provided no detailed definition of the term "minister of religion"; the exemption was broad 27

(4) Intent of Congress to be generous in exemption stated by National Director of Selective Service 27-28

PAGE

ONE *continued*

II.

The 1948 Act shows a continuing congressional intent to give a broad and generous exemption to ministers, so long as the ministry is pursued by them as their vocation. 28-36

(1) The 1948 Act changed definition by requiring minister to preach as his vocation 28

(2) Definitions appearing in the 1948 Act 28-29

(3) The word "leader" (of religion) referred to in the report does not narrow the definition of the term "minister of religion" appearing in the act 29-31

(4) Exemption not confined to pulpit preachers but extends to executives and administrators in religion who have no congregations 31-32

(5) The term "regular minister" used in the act shows intent to exempt administrators as well as pulpit preachers in religion 32-34

(6) Use of word "vocation" shows congressional intent to exempt all ministers of all religions who pursue the ministry as their main job 35-36

III.

The terms of the act exempting men pursuing ministry as their "vocation" exclude consideration by the draft board or the court of time spent in incidental secular activities, as their "avocation." 37-42

(1) Use of the word "vocation" excludes consideration of sidelines pursued by exempt and deferred persons under act 37

(2) Examples of side pursuits not interfering with vocation show outside activities to be immaterial 37-38

(3) Historically ministers of religion required to perform secular work as a sideline to support themselves 38-39

(4) Congress did not intend to discriminate between the wealthy clergyman and the poor preacher 39-40

(5) Time devoted to avocation or outside work was not intended by Congress to be considered basis in fact for denial of exemption 41-42

PAGE

ONE *continued*

IV.

Congress had in view historical practices of religions whereby ministers of all denominations preach, not only from the pulpit, but also upon the streets and from door to door. Congress intended to include all kinds of religious preaching and not restrict it to any one practice, and especially that of the itinerant ministers who are the only source of religious instruction for over 70 million people in this country. 43-49

(1) Congress had in mind many different methods of preaching found in the history of religion 43-44

(2) Earliest preaching, according to the Bible, was public and from door to door 44-45

(3) Preaching never confined to cathedral or pulpit 45

(4) Congress had in mind religious history showing itinerant ministry as a major force in religion 45-46

(5) Street preaching and door-to-door ministry are historically a part of the work of ministers of the modern Christian church 46-47

(6) The fact that there are millions of nonchurchgoers shows purpose of Congress to protect the door-to-door itinerant minister 47-49

V.

Benefits received by the federal Government from the work of all religion in this country were known to Congress and, because of them, Congress intended to reciprocate by giving to the words "vocation," "preach" and "teach" as broad a meaning as is reasonably possible, to protect all religions. 49-50

(1) Preaching activity of ministers bears burdens of government 49

(2) Moral restraint on people through religion calls for reciprocal benefits from government 49

(3) Exemptions for benefit of religion have always been liberally construed 50

PAGE

TWO

Under the statute and regulations it is the duty of this Court to hold that the ecclesiastical determinations made by Jehovah's Witnesses on where and how petitioner preaches is binding on the draft boards, the Government and the courts. 51-61

I.

The law frees all religious organizations from every governmental inquiry and judicial control of religious matters relating to the ordination of ministers and the manner and the place of their preaching 51-54

(1) Freedom of religion prohibits distinctions being made between one religious practice and another 51

(2) Training of ministers, ordination and methods of preaching by ministers are free of all secular control 52

(3) Qualifications of ministers and methods of preaching are ecclesiastical determinations binding on secular tribunals 52

(4) Propriety of religious practices not subject to review so as to avoid heresy trials 53

(5) Decision by religious organization to confine membership to itinerant ministers cannot be questioned in secular tribunals 54

II.

Under the act and the regulations the Government is not permitted to make an assault on the ecclesiastical decisions of any unorthodox and unpopular religious organization and deny rights under the act and regulations to a minister of that group by making an illegal invasion of the religious field reserved to the governing body of the church. It (as it has done) cannot fix tests of heresy. The Government cannot by law seek to compel religious conformity in violation of the above-stated rule of religious immunity and the commands of the First Amendment of the United States Constitution under the guise of enforcing the draft law. 54-60

(1) There is no uniform standard or agreement among religions about propriety of preaching methods 54-55

(2) If one of many different standards employed, discrimination would result to religion 55

PAGE

TWO *continued*

(3) Cases show principle of leaving religion alone to run its own business 55-58
(4) Even in draft cases boards and courts are incompetent to question training of ministers or methods of preaching 58-59
(5) Acceptance of Government's argument will lead to ultimate destruction of all religion 59-60

III.

If the act and regulations are construed so as to allow the Government, the draft boards and the courts to invade the ecclesiastical decisions of religious bodies and apply principles of religious conformity in determining who is qualified as a minister, then, as construed and applied, the act and regulations will discriminate and be in conflict with the First Amendment of the United States Constitution prohibiting the establishment of a state religion and forbidding the abridgment of any rights to freedom of religion. 60-61

(1) The statute must be interpreted reasonably 60
(2) Absurd consequences must be avoided 60
(3) Acceptance of Government's argument leads to unconstitutional results by invading ecclesiastical determinations 60-61

Three

The uncontradicted and unimpeached documentary evidence in the draft board file showed that petitioner pursued his ministry as his vocation. The denial of the ministerial exemption, therefore, is arbitrary, capricious and without basis in fact. 62-102

I.

The facts showed that petitioner was a full-time minister, known as a "pioneer." He preached in his missionary field as his vocation. 62-73

(1) Jehovah's Witnesses are a recognized group 62
(2) Eleven months before local board classification Dickinson pursued the full-time ministry as his vocation 62

PAGE

THREE *continued*

(3) Oral testimony given by Dickinson showed he was ordained, a change of status since filing questionnaire 62-63

(4) Dickinson submitted many supporting documents showing that he was in the ministry as his vocation and presiding over a congregation 63

(5) His file showed only five hours weekly devoted to a secular sideline of radio repair work 63

(6) Record showed he devoted at least 150 hours per month to his duties as minister of religion 63

(7) Since no dispute in evidence there is no weighing of the evidence; hence validity of classification a matter of law 64

(8) Cases show full-time ministers of Jehovah's Witnesses exempt 64-65

(9) *Hull* case, showing change from part-time to full-time ministry, supports Dickinson here 65

(10) Lack of contradiction in evidence and undisputed record showing ministry to be vocation proves classification illegal and without basis in fact 66

(11) Present act should be construed liberally in determining whether there is no basis in fact 67

(12) Jehovah's Witnesses entitled to same treatment as ministers of other religious organizations 67-68

(13) *Cox* and *Martin* cases are not applicable because those men did not pursue the ministry as vocation but had full-time secular jobs 68

(14) Statement in *Cox* case about questions of change of status as basis in fact is contrary to law and erroneous 69-70

(15) There was no majority opinion in the *Cox* case 70-71

(16) Majority in *Cox* case did not decide Jehovah's Witnesses not ministers but limited holding to failure to pursue ministry as full-time job 71

(17) *Dickinson* case distinguished from *Cox* case because Dickinson submitted supporting documentary evidence in addition to his own statements 71-72

(18) Dissenting opinions in the *Cox* case by Justices Douglas and Murphy 71-73

PAGE

THREE *continued*

II.

The performance by petitioner of part-time radio repair work incidental to his vocation of the ministry does not constitute basis in fact for the denial of the exemption as a minister of religion. 74

(1) Dickinson devoted five hours weekly to radio repair work, earning $35 per month, which was not his vocation 74

(2) Dickinson devoted as much time to his ministry as do the wealthy clergy 74

(3) Court's statement about change of status by Dickinson being real or feigned is illegal 75

(4) Court below impeached in finding by memorandum made by the local board that Dickinson devoted his full time to preaching 75

(5) Local board found Dickinson pursuing ministry as vocation 75-76

(6) Poor preachers supported by gifts from congregation and board knew it 76

(7) Draft boards placed no reliance on part-time secular work by Dickinson 77

III.

That Dickinson occupied another office as a minister in the organization of Jehovah's Witnesses, the presiding minister of the Coalinga, California, Congregation of Jehovah's Witnesses, incidental to his work as a pioneer minister, does not affect his vocation as a full-time pioneer minister of Jehovah's Witnesses. 77-80

(1) Dickinson was presiding minister of a congregation of missionaries 77

(2) Dickinson had two congregations, one in the missionary field, the other in the meeting place of Jehovah's Witnesses 78

(3) That Jehovah's Witnesses are not laymen does not change congregational status of Dickinson as presiding minister 78

(4) Ministerial status of others of Jehovah's Witnesses in congregation immaterial 78

(5) Jehovah's Witnesses a society of missionaries and ministers 79

PAGE

THREE *continued*

(6) Presiding minister of congregation is a part-time job and alone does not entitle Dickinson to exemption 79-80

(7) Duties as presiding minister buttressed the claim of Dickinson for exemption based on his full-time missionary work 80

(8) Full-time missionary work alone entitles Dickinson to exemption 80

IV.

Nothing said in the opinion of the court below about the status of petitioner as a full-time pioneer minister prevents his classification as a minister of religion based alone on that activity. 81-102

(1) Exemption is not limited to full-time pulpit preaching but extends to all other ministers regardless of how they preach 81

(2) The courts have held itinerant ministers of Jehovah's Witnesses to be exempt 81

(3) Use of word "vocation" in 1948 Act removed any uncertainty that existed in the 1940 Act 81

(4) Leadership of Dickinson among Jehovah's Witnesses as a full-time house-to-house minister makes him exempt; his congregation is in the homes of the people 82

(5) Religious congregations not always confined to any one building 82

(6) Dickinson preached primitively in public and from door to door 82

(7) The congregation of Dickinson is found in the homes of the people in his missionary field 83

(8) Even if Dickinson's preaching were confined to distribution of books he still would be exempt 83-84

(9) Ecclesiastical determination of Jehovah's Witnesses that preaching shall be done by distribution of Bible sermons is binding upon the draft boards, the Government and the courts 84

(10) Book colporteurs in religious organizations are exempt as ministers 84

PAGE

THREE *continued*

(11) Jehovah's Witnesses have been declared exempt even though they merely distribute religious books, according to the National Director 84-85

(12) Background of Dickinson cannot be questioned by board or court 85

(13) Dickinson showed a fit background of training for his ministry 85-86

(14) The court below illegally assaulted the ordination ceremony of Jehovah's Witnesses which is binding upon the court through an unassailable ecclesiastical determination 86

(15) Dickinson showed that he had been ordained by undergoing the ceremony of baptism 86

(16) There is no fixed standard of ordination under the draft law 87

(17) The baptism of Dickinson is a primitive method of ordination of Christian ministers 87-88

(18) Evidence submitted by Dickinson showed he was formally ordained and the memorandum of the local board was erroneous 88-89

(19) Both the Bible and secular references show baptism was the ordination ceremony of the early Christian church and, therefore, Dickinson did not place a special meaning on the term "ordination" 89-90

(20) The assault made by the court below on the ordination ceremony of Jehovah's Witnesses is contrary to law as expressed in the old and modern decisions 90-91

(21) It did not appear that Dickinson submitted weaker evidence when stronger evidence was demanded; the board demanded no additional proof 91-92

(22) At no time did the draft boards question the documentary proof submitted by Dickinson in support of his claim as a full-time ordained minister 92-93

(23) The reliance upon absence of Dickinson's name from the certified list filed with National Headquarters under the 1940 Act is illegal, arbitrary and capricious and without basis in fact 93-95

PAGE

THREE *continued*

(24) The court below confuses the type of proof required from a regular minister with that of an ordained minister under the act 95

(25) The court below illegally relied upon the appearance and demeanor of Dickinson when the board did not do so 95-96

(26) No question was raised by the board about Dickinson's youthfulness, which was immaterial under the act 96-97

(27) The Bible and secular history of religion show that ministers have been ordained at an early age 97-99

(28) A man old enough to be drafted is old enough to claim the exemption provided for youths in the act 99-100

(29) The draft board did not rely on the change of circumstances in Dickinson's ministry (from part-time to full-time) 101

(30) Reliance by the court below on the quotation from the the *Cox* case about change of circumstances is inappropriate 101-102

(31) Regardless of change of status from part time to full time, Dickinson was pursuing the ministry as his vocation at the time of his classification 102

Four

Failure of the local board to make a full summary of oral evidence given by Dickinson upon personal appearance about his change in status deprived petitioner of a full and fair hearing before the appeal board, which was not cured by later letters to the National Headquarters of the Selective Service System. 102-109

(1) The regulations require that a memorandum of new and additional oral evidence be made by the local board 102-103

(2) The regulations require the local board to check to see that all steps are complied with 103

PAGE

FOUR *continued*

(3) The regulations require a *de novo* consideration by the appeal board, who cannot see the registrant but must depend on the record only 103-104
(4) The function of the local board on personal appearance is like that of a master or referee taking testimony for the appeal board; a memorandum must be made 104
(5) New and additional evidence on seven items was given by petitioner at the personal appearance 104-105
(6) The evidence about failure to make a full and adequate summary is undisputed, presenting only a question of law 106-108
(7) The letter by Dickinson to the National Appeal Board did not cure the omission; Dickinson was harmed before the district appeal board before he wrote the National Director 108
(8) Since the undisputed evidence shows violation of the regulations on failure to make a full résumé of the hearing, the rights of Dickinson were violated 109

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67 C. L. R. 116, 128 (1943) 55
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PAGE

Dickinson v. United States
203 F. 2d 336 (9th Cir., March 9, 1953) 1
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297 U. S. 167, 172-173 64
Donahoe v. Richards
38 Me. 379, 409 56
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150 F. 2d 768, 773-781, 327 U. S. 114, 121 ..... 66, 67, 72, 104, 107
Fabiani, Ex parte
105 F. Supp. 139, 145-147 (E. D. Pa.) 67
Flakowicz v. Alexander
69 F. Supp. 181 (Conn.) 64
Fowler v. Rhode Island
348 U. S. 67, 69-70 ..... 57, 58
Goff v. United States
135 F. 2d 610 (4th Cir.) 73
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280 U. S. 1, 16-17 ..... 52, 53
Harriman v. Interstate Commerce Commission
211 U. S. 407, 422 61
Harrison v. Brophy
59 Kans. 1, 5, 51 P. 885 56
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50 U. S. 372, 378 60
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151 F. 2d 633, 635, 637-639 (7th Cir.) 34, 65, 67, 69, 81, 89, 93, 101
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19 R. (J.) 5 (1891) 47
Johnson v. United States
126 F. 2d 242, 248 (8th Cir.) 66
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344 U. S. 94, 116 52
Klix v. Polish Roman Catholic St. Stanislaus Parish
118 S. W. 1171, 1176 (Ky.) 57
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190 F. 2d 775 (4th Cir.) 68, 73
Mattern v. Canevin
213 Pa. 588, 63 A. 131 50

PAGE

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4 O. A. R. 501 (1880, Ontario Court of Appeals) 57
Murdock v. Pennsylvania
319 U. S. 105, 109 ..... 48, 84
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256 U. S. 345, 349 39
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173 F. 2d 328, 134 F. 2d 972 (6th Cir.) 72, 85, 104, 108
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9 Ohio Dec. 441, 445 91
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2 D. L. R. 633, 635 (1924) 50
Smith v. United States
327 U. S. 114, 157 F. 2d 176 (4th Cir.) 70
State ex rel. Freeman v. Scheve
65 Neb. 853, 879, 93 N. W. 169 56
Thornton v. Howe
31 Beavin 14 51
Trainin v. Cain
144 F. 2d 944, 949 (2d Cir.) 27
Trustees of First M. E. Church South v. Atlanta
76 Ga. 181, 193 50
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46 Iowa 275 50
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310 U. S. 534 60
United States v. Ballard
322 U. S. 78, 86-87 53
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157 F. 2d 939 (2d Cir.), 329 U. S. 692, 160 F. 2d 999 (2d Cir.) 59
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Western District of Missouri, Sept. 1, 1953 ..... 65, 81
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213 U. S. 366, 408 61
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71 F. Supp. 545, 548, 549 (W. D. Pa.) 106
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109 F. Supp. 377, 378 (W. D. Ky.) 64, 81
United States v. Kirby
7 Wall. (U. S.) 482, 486-487 60

PAGE

United States v. Romano
103 F. Supp. 597, 600 (S. D. N. Y. 1952) 108
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161 F. 2d 90, 93 (3rd Cir.) 105, 107
Watson v. Jones
80 U. S. (13 Wall.) 679, 728 52
Watterson v. Halliday
77 Ohio St. 150, 82 N. E. 962 50
Western Union Tel. Co. v. Lenroot
323 U. S. 490, 508 61

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1622.19 6
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1623.1 104
1623.1(b) 102
1624.2 ..... 3, 6

PAGE

Regulations *continued*

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Exodus 16:4 76
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Psalm 83:18 88
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Proverbs 8:32 97
Ecclesiastes 12:1 97
Isaiah 61:1-3 ..... 88, 105
Jeremiah 1:4-7 97
Joel 2:28, 29 97
Matthew 3:13-17 88
Matthew 6:25-26 76
Matthew 9:35 82
Matthew 10:7, 10-14 82
Matthew 18:1-6 97
Matthew 24:14 105
Matthew 28:19 44
Mark 6:6 ..... 44, 82
Luke 2:46-49 97
Luke 8:1 82
Luke 10:1 44
Luke 12:22-24 76
Luke 18:16 97
Luke 22:24-27 82

PAGE

ALMIGHTY GOD, Word of [*The Bible*] *continued*

Acts 3:23 88
Acts 5:42 44
Acts 20:20 ..... 44, 82
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1 Corinthians 4:17 97
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No. 57

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v.

UNITED STATES OF AMERICA,

Respondent

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF FOR PETITIONER

OPINION BELOW

The opinion of the court below is reported at 203 F. 2d 336 (March 9, 1953). [122][1]

JURISDICTION

The judgment of the court of appeals was entered March 9, 1953. [144] On March 28, 1953, the Honorable William O. Douglas, Circuit Justice, extended the time in which to file the petition for writ of certiorari to and including May 8, 1953. The petition for writ of certiorari was filed in time

[1] Numbers appearing herein within brackets refer to pages of the printed Transcript of Record in this case.

(May 4, 1953). On June 15, 1953, the petition for writ of certiorari was granted. [146] The jurisdiction of this Court rests upon 28 U. S. C. 1254(1).—See also Rules 37(b)(2) and 45(a), Federal Rules of Criminal Procedure.

QUESTIONS PRESENTED

I.

How Involved

Section 6(g) of the Selective Service Act of 1948 provides that ministers of religion are exempt from training and service. Section 16(g)(1), (2) and (3) of said act provides that a registrant who preaches as his customary vocation and teaches "the principles of religion and administers the ordinances of public worship as embodied in the creed or principles of such church, sect or organization" is a minister of religion, ordained or regular. Registrants excluded from the exemption in this section are those who do not preach as above required.

Dickinson showed, without dispute, that he had been ordained "in accordance with the ceremonial" established by Jehovah's Witnesses as a minister and that he "as his regular and customary vocation preaches and teaches the principles of religion and administers the ordinances of public worship" of Jehovah's Witnesses, devoting all of his time except five hours per week to his vocation.

Question One

Whether there was basis in fact for the denial of the exemption as a minister of religion to Dickinson, found by the board to be devoting "his full time to the work of preaching" because (1) all of Jehovah's Witnesses claim to be ministers; (2) the ordination ceremony of Jehovah's Witnesses is not orthodox or in accordance with the ceremony employed by other religions but is patterned after that of the Lord Jesus Christ; (3) there was no formal certificate

of ordination in the file showing Dickinson to be recognized; (4) Dickinson "was not yet 21 years of age" at the time of claiming to be a minister of religion; and (5) Dickinson gave up, too late, his full-time night secular job as radio repairmen (that did not interfere with his ministry), which was after he had been classified I-A by the local board?

II.

How Involved

Section 1624.2 of the Selective Service Regulations provides that, following the personal appearance before the local board by the registrant, new and "further information" given orally to the local board "shall be summarized in writing" and "shall be placed in the registrant's file."

Dickinson appeared before the local board and gave extensive oral testimony about (1) his background and training for the ministry; (2) quitting his night secular job; (3) his appointment as presiding minister or "the overseer of a congregation of people in Coalinga, California"; (4) the certificate of appointment which he displayed to the local board members, which certificate related to his being presiding minister and which was issued by the legal governing body of Jehovah's Witnesses; (5) supporting himself by working five hours weekly as radio repairman and through help received as a minister with no salary; and (6) the affidavit that he filed with the local board certifying that he was "in charge of the missionary work" of Jehovah's Witnesses in a 5,400-square-mile area and that he was "devoting his full time to the work of preaching" as a pioneer minister since August 1, 1949.

The memorandum prepared by the local board showed that (1) he preached in a public building; (2) [falsely] he had not been ordained; (3) he devoted "his full time to the work of preaching"; (4) he supported himself through "this work"; and (5) he was a "Jehovah's Witness."

The memorandum did not show (1) he had quit full-

time secular work, record of which full-time occupation appeared in the file; (2) his background and education; (3) he had been formally ordained; (4) he was a presiding minister over a congregation; (5) he preached one hundred hours monthly in missionary work and devoted additionally fifty hours monthly to his work as presiding minister of the congregation; and (6) other material facts given orally to the local board at his personal appearance.

Question Two

Whether the failure of the local board to make the memorandum of the new and additional oral evidence deprived Dickinson of a full and fair hearing before the district appeal board when that board did not have before it and could not have had before it the letter written by Dickinson to the Director of Selective Service requesting an appeal to the President, which letter (written after the determination made by the district appeal board) contained some of the facts omitted by the local board in its memorandum?

STATUTES AND REGULATIONS INVOLVED

The indictment was returned pursuant to the provisions of Section 12(a) of the Selective Service Act of 1948 (50 U. S. C. 462(a), 62 Stat. 622). Section 6(g) of the Selective Service Act of 1948 reads as follows:

> "Regular or duly ordained ministers of religion, as defined in this title, and students preparing for the ministry under the direction of recognized churches or religious organizations, who are satisfactorily pursuing full-time courses of instruction in recognized theological or divinity schools, or who are satisfactorily pursuing full-time courses of instruction leading to their entrance into recognized theological or divinity schools in which they have been pre-enrolled, shall

be exempt from training and service (but not from registration) under this title."—50 U. S. C. § 456(g), 62 Stat. 609.

Section 16(g)(1), (2) and (3) reads as follows:

"(1) The term 'duly ordained minister of religion' means a person who has been ordained, in accordance with the ceremonial, ritual, or discipline of a church, religious sect, or organization established on the basis of a community of faith and belief, doctrines and practices of a religious character, to preach and to teach the doctrines of such church, sect, or organization and to administer the rites and ceremonies thereof in public worship, and who as his regular and customary vocation preaches and teaches the principles of religion and administers the ordinances of public worship as embodied in the creed or principles of such church, sect, or organization.

"(2) The term 'regular minister of religion' means one who as his customary vocation preaches and teaches the principles of religion of a church, a religious sect, or organization of which he is a member, without having been formally ordained as a minister of religion, and who is recognized by such church, sect, or organization as a regular minister.

"(3) The term 'regular or duly ordained minister of religion' does not include a person who irregularly or incidentally preaches and teaches the principles of religion of a church, religious sect, or organization and does not include any person who may have been duly ordained a minister in accordance with the ceremonial, rite, or discipline of a church, religious sect or organization, but who does not regularly, as a vocation, teach and preach the principles of religion and

administer the ordinances of public worship as embodied in the creed or principles of his church, sect, or organization."—50 U. S. C. § 466(g)(1), (2) and (3), 62 Stat. 624.

Section 1622.19 of the Selective Service Regulations provides:

"1622.19 *Class IV-D: Minister of Religion or Divinity Student.*—(a) In Class IV-D shall be placed any registrant:

"(1) Who is a regular minister of religion;

"(2) Who is a duly ordained minister of religion;

"(3) Who is a student preparing for the ministry under the direction of a recognized church or religious organization and who is satisfactorily pursuing a full-time course of instruction in a recognized theological or divinity school; or

"(4) Who is a student preparing for the ministry under the direction of a recognized church or religious organization and who is satisfactorily pursuing a full-time course of instruction leading to entrance into a recognized theological or divinity school in which he has been pre-enrolled."—32 C. F. R. § 1622.19.

Section 1624.2 of the Selective Service Regulations reads as follows:

"1624.2 *Appearance Before Local Board.* (a) At the time and place fixed by the local board, the registrant may appear in person before the member or members of the local board designated for the purpose. The fact that he does appear shall be entered in the 'Minutes of Actions of Local Board and Appeal Board' on the Classification Questionnaire (SSS Form No. 100).

"(b) At any such appearance, the registrant

may discuss his classification, may point out the class or classes in which he thinks he should have been placed, and may direct attention to any information in his file which he believes the local board has overlooked or to which he believes it has not given sufficient weight. The registrant may present such further information as he believes will assist the local board in determining his proper classification. Such information shall be in writing, or, if oral, shall be summarized in writing and, in either event, shall be placed in the registrant's file. The information furnished should be as concise as possible under the circumstances. The member or members of the local board before whom the registrant appears may impose such limitations upon the time which the registrant may have for his appearance as they deem necessary."—32 C. F. R. § 1624.2.

Section 1627.1 of the Selective Service Regulations reads as follows:

"1627.1 *Who May Appeal to the President from Any Determination of an Appeal Board.* (a) When either the State Director of Selective Service or the Director of Selective Service deems it to be in the national interest or necessary to avoid an injustice, he may appeal to the President from any determination of an appeal board. He may take such an appeal at any time.

"(b) An appeal to the President may be taken by the Director of Selective Service (1) by mailing to the local board, through the State Director of Selective Service, a written notice of appeal or (2) by placing in the registrant's file a written notice of appeal and, through the State Director of Selective Service, advising the local board thereof."—32 C. F. R. § 1627.1.

STATEMENT OF THE CASE

The indictment charged Dickinson with a violation of Section 12(a) of the Selective Service Act of 1948. (50 U. S. C. App. 462(a)) It was alleged that after registration and final classification Dickinson was ordered to report for induction, that he reported for induction and "did on the 17th day of July, 1951, in the City and County of San Francisco, State and Northern District of California, knowingly refuse to submit himself to induction and be inducted into the Armed Forces of the United States as provided in the said Selective Service Act of 1948, and the rules and regulations made pursuant thereto." [4] Dickinson was arraigned. [5] He pleaded not guilty. [6] Trial by jury was waived and he consented to trial to the court. [7]

The case was called for trial on October 8, 1951. [22] Evidence was received. [31-97] A motion for judgment of acquittal was made at the close of the evidence. [98-100] The motion was denied. [23, 100] Dickinson was found guilty. [23-24, 100] The court sentenced Dickinson to two years in the custody of the Attorney General. [24, 113] Judgment and commitment were entered in the court below. [25-26] Notice of appeal was duly and timely served. [27] Application was made for bail in the trial court pending appeal. It was denied. [113-114] On motion made to the court below bail was allowed pending appeal. [116]

The court of appeals affirmed the judgment of conviction. [144] It held that the failure to comply fully with the regulations requiring a summary of the oral evidence was harmless error. The court held that the denial of the ministerial exemption was not without basis in fact. It held the draft board order was valid. It declared that Dickinson was properly convicted for failing to submit to induction as ordered by the local board. [122-143] The indictment is based upon refusal of Dickinson to comply with the order to report for induction. He refused to submit as ordered. The order of the draft board is based on a I-A classifica-

tion. The indictment, order and classification sprang from events that shall now be stated.

THE FACTS

Dickinson registered in the time and manner required by law with Local Board No. 37 of San Francisco County, located at 2038 Mission Street in San Francisco, September 15, 1948. [32-33] He filed his Classification Questionnaire in November 1948. [33-34] (Government's Exhibit 2) Statements appearing in Series VI of the form showed as follows: "(a) I am a minister of religion. (b) I do regularly serve as a minister. (c) I have been a minister of the Jehovah's Witnesses since July 1, 1947. (d) I have not been formally ordained." Series VIII of the questionnaire stated "I am a minister and support myself by doing radio work at night." Dickinson showed in Series VIII that he was employed in the San Francisco Naval Shipyard since June 29, 1948. The questionnaire showed that he devoted forty hours per week to this work as a repairman, earning $1.36 per hour. Series X of the questionnaire showed that he had completed six years elementary school, three years of junior high school and three years of high school. It appears that upon graduation he attended San Francisco City College and Samuel Gompers Trade School, where he was trained for radio engineering. At the end of the questionnaire he made a statement regarding his classification, stating that it was his opinion that he should be placed in "Class 4D."

No classification was given to Dickinson until July 31, 1950, when the local board placed him in Class I-A. [34] He acknowledged receipt of this classification of I-A, complained about it because it made him liable for training and service and requested a personal appearance before the local board. (Government's Exhibit 3) [34] On September 2, 1950, the local board notified Dickinson to appear before it on September 7, 1950, at 7:30 in the evening for a hearing. [35]

Dickinson appeared before the local board. When the hearing opened he informed the board that he was claiming exemption as a minister of religion. The chairman asked "What education have you had for the ministry?" [59] He informed the board that he had attended the Theocratic Ministry School of Jehovah's Witnesses. [59] He reviewed extensively the course of study pursued by him in preparation for the ministry. [59-61] He informed the board that there had been an important change in his vocation. He explained that since the filing of his questionnaire in 1948 he had quit secular work as a radio repairman, had been fully and officially ordained in April, 1949, and that he was at the date of the hearing and long prior thereto engaged in the full-time ministry as his vocation. [62-63] He informed the board that he quit working for the Navy Shipyard on August 1, 1949. [93, 95] He also informed the board that he had been out of such secular work and had engaged in the full-time missionary work for over a year before the date of his personal appearance. [95] He explained that he had changed his status from that of a regular minister to that of an ordained minister. [63]

Upon the personal appearance Dickinson told the board that he devoted one hundred hours per month to missionary evangelistic work, preaching to the people in their homes and publicly upon the streets. [64-65] He further informed the board that he had been transferred from San Francisco to Coalinga, California, where he acted as presiding minister of the congregation of Jehovah's Witnesses. [65] He pointed out that it was his duty to preside weekly over the meetings of the congregation at the church meeting place of Jehovah's Witnesses in Coalinga. [71] Upon the personal appearance Dickinson also testified that he supervised the missionary evangelistic work of other ministers of Jehovah's Witnesses in the missionary field assigned to them by the Watchtower Bible and Tract Society. [72]

Dickinson pointed out to the local board that in addi-

sion to the one hundred hours devoted to door-to-door missionary work he spent fifty hours more per month in preaching from the pulpit at the church meeting place of Jehovah's Witnesses and in preparation of sermons and otherwise carrying out his spiritual duties as presiding minister of the congregation. [73-76, 77, 90]

On the occasion of the personal appearance before the local board Dickinson pointed out that he did some part-time radio repair work of about five hours per week, averaging earnings of $35 per month to defray his cost of living. [73-74] He gave the local board a breakdown of his expenses and showed that he could live on $35 a month. When the board asked him to explain how it was that his vocation was that of the ministry when he received no pay from his preaching activity, he testified that he answered the board as follows: "So I explained to him, suppose a person were financially fixed, suppose he were a millionaire and he refused a salary from the church, he would still be a minister and doing the work of a minister, that would still be his vocation. And also I told him about the Scripture parables of the Apostle Paul. I said to him how the Apostle Paul said, the Ninth Chapter of First Corinthians, said that he had authority to reap from the persons or the congregation their material things because he had sowed to them spiritual things. . . . So I explained to him that the Apostle Paul instead of burdening the congregation with his material cares, instead he told them that he would not want to burden them down, he would like to furnish them the good news without cost, and he made tents for his living." [75, 76]

Following the personal appearance the clerk of the local board made a very brief memorandum of the oral testimony given upon the occasion of the personal appearance. See Government's Exhibit 4, reading as follows:

"9/7/50

"Dickinson

"Public Bldg. where he preaches:

"Has not been ordained.
"Devotes his full time to the work of preaching.
"Supports himself through this work.
"Jehovah's Witness." [36]

Upon the trial this exhibit was called to the attention of Dickinson. [79] He said that the statement in the memorandum that he had not been ordained was not true. [79] He said that the clerk probably got her idea that he was not ordained from the statements appearing in his questionnaire that was filed several months prior to his ordination, which was several months before his personal appearance. [79] He pointed out to the court that the memorandum did not contain any of the extensive oral evidence that he gave to the board about his ordination. [79-80] He also pointed out that he gave extensive testimony upon his education and training for the ministry and that the memorandum made no mention of this testimony. [80, 83] Also he pointed out that the memorandum failed to disclose a summary of the extensive evidence that he gave to the board about the time that he devoted to his vocation which was the full-time ministry. [80-90] He complained that the written statement failed to show that he had quit working at the Navy Yard months before the personal appearance. [95] He said: "All they had was six lines on that personal hearing and that was hardly sufficient. It left out so many things." [83]

Upon the personal appearance Dickinson filed two written statements showing that he conducted home Bible studies with Mrs. Margaret Busterna and Mrs. Olga Egga, one on Tuesday and one on Thursday of each week. He also submitted an affidavit of C. David Easter, who stated that Dickinson was "officially in charge of our missionary work in a 5,400 square mile section of territory embracing parts of Fresno and Kings counties with headquarters in Coalinga, California, since January 3rd, 1950. Prior to his Coalinga, California appointment Mr. George L. Dickinson worked with me here in San Francisco devoting his full

time to the ministry, being enrolled as a full-time pioneer minister by national headquarters as of August 1st, 1949, and continuing as such in good standing until the present time."—See Government's Exhibits 6 and 7.

On September 14, 1950, the local board reviewed the information submitted on September 7 and classified Dickinson in I-A, making him liable for training and service. On September 15, 1950, notice of classification was mailed to him. [36] He was ordered to report for a physical examination, resulting in his being declared acceptable. [38-39] On appeal to the board of appeal he was classified in Class I-A on February 19, 1951. [31-40] On February 28, 1951, he wrote a letter to Major General Lewis B. Hershey, Director of the Selective Service System, requesting that he take an appeal from the appeal board determination to the National Selective Service Appeal Board in Washington. [41] On April 10, 1951, General Hershey appealed the case to the President, resulting in a review by the National Appeal Board. [42]

On June 5, 1951, the members of the National Selective Service Appeal Board unanimously classified Dickinson in Class I-A. [43] On July 2, 1951, Dickinson filed a conscientious objector form. [45-47] The memorandum in the file shows that the clerk was requested to ask him why he changed his mind regarding filing a conscientious objector form. At first he signed the request, then struck out his signature and later, after the final classification by the National Appeal Board, renewed his request. He explained the reason was due to his misunderstanding as to the meaning of the term conscientious objector. [86-87] The conscientious objector form was properly filled out and showed that he was one of Jehovah's Witnesses with conscientious objections to combatant and noncombatant military service. A magazine of the organization was submitted along with the form showing that Jehovah's Witnesses are conscientious objectors while not pacifists. [47, 50-51]

An order was issued for Dickinson to report for in-

duction on July 2, 1951, commanding him to appear on July 16, 1951. On the day that the conscientious objector form was filed the local board issued the order to report for induction. [47] The board reviewed the file and considered the conscientious objector form on July 12. It refused to reopen the case and stay the order to report for induction. [51-52] On July 16, 1951, Dickinson reported for induction and thereafter, on the 17th of July, refused to be inducted into the armed forces. [52-54]

SPECIFICATION OF ERRORS

The court of appeals erred in failing to hold that the denial of the claim for exemption was arbitrary, capricious and without basis in fact, in failing to find an illegal failure to make an adequate record of the hearing and in affirming the judgment of the district court.

SUMMARY OF ARGUMENT

One

A proper construction of the statute and the regulation exempts all ministers of all religious organizations preaching, as their vocation, the doctrines of their churches. This exemption prevails regardless of part-time secular activities pursued as an avocation incidental to their ministry.

I.

A brief discussion of the legislative history behind the 1948 Act shows an intent to make the exemption broad and liberal.

The purpose of the exemption for ministers of religion under the different draft laws was to give a legislative exemption. It has never been an executive deferment. No discretion is given to the administrative branch of the Government on this grant of Congress.

Congress intended to insure to the people that all their

ministers of religion would be kept home. It expressly stated that they would not be taken away. This was because they would have to preach to the people, bury their dead and marry their young.

Legislative history of the different draft laws shows that the exemption is not confined to the minister preaching from the pulpit. It was expressly stated that it extended to lay brothers and other nonpulpit-preaching ministers. The use of the term "regular minister of religion" in addition to the term "ordained minister of religion" shows the broad purpose of Congress. It is a catch-all phrase, or a saving clause, to extend the exemption to all nonpulpit-preaching ministers.

The background of the law and the terms of the acts therefore show a definite congressional intent to place a broad and liberal interpretation upon the use of the words "minister of religion" in the act.

II.

The 1948 Act shows a continuing congressional intent to give a broad and generous exemption to ministers, so long as the ministry is pursued by them as their vocation.

Senate Report No. 1268, 80th Congress, 2nd Session, page 13, shows the first intent of Congress to restrict the exemption provided for ministers of religion. It demonstrated a purpose in the 1948 Act to confine it to only those who pursue the ministry as their "vocation."

The report used the word "leader." The word "leader" (in religions) used in the report is expressly controlled by reference in the report to the definition appearing in the bill. The controlling word "vocation" used in the definition of a "minister of religion" in the bill was not narrowed by the use of the word "leader" in the report. The use of the word "leader" showed an intent to exclude only laymen from the exemption. It did not restrict the exemption of all ministers of religion who pursue the ministry as their "vocation." The act gives the exemption to all ministers of

all religions who preach their doctrines as their "vocation."

Nothing appears in the act to show an intent of Congress to prescribe any standard way of preaching and teaching religion. Nowhere in the legislative history of the draft laws or in the 1948 Act is there any attempt to limit it. No definition of the term "preaches and teaches the principles of religion and administers the ordinances of public worship" is given by Congress or the regulations. The phrase is broadened by these words: "as embodied in the creed or principles of such church, sect, or organization." They show a congressional intent to let each separate group decide the proper qualifications of its ministers and methods of preaching to be employed.

No right to set itself up as a religious hierarchy was given to the Government. The absence of any fixed standards in the act rejects any argument of the Government as to what is orthodox in preaching and teaching by the minister claming exemption. All methods of preaching and teaching of all religious groups done by their ministers was intended to be protected by the act.

III.

The terms of the act exempting men pursuing ministry as their "vocation" exclude consideration by the draft board or the court of time spent in incidental secular activities, as their "avocation."

Nothing is said in the act about the amount of hours or weekly or monthly time that may be devoted to some sideline or avocation by the exempt or deferred registrant. Judges when not at their work may run ranches or farms. Congressmen may have outside businesses. Others may pursue other avocations.

Only very few ministers of religion today are fully supported by their vocation. This has been true throughout the history of religion. The congregations are too poor to afford ministers all they require. That a poor preacher devotes part of his time, when not attending to his vocation of the

ministry, to secular work does not take away his exemption. This secular work, like the outside financial activity of judges and other officials freed from military service, is wholly irrelevant. It may not be considered as basis in fact for denial of the exemption so long as it appears that the minister preaches for his group as his vocation.

Hold that the clergyman of a rich church is exempt. But the preacher of a poor church is not! Yet they both devote the same amount of time to their vocations. Is not this discrimination against poor religious congregations? Is not it unequal law in favor of the rich congregations who have big churches? Congress did not intend this. Time devoted to outside activities was never intended by Congress to be used to discriminate. The sole criterion is: Does the minister pursue the ministry as his vocation? If he does, then Congress intended him to be exempt. This is so regardless of what he does when away from his ministry.

IV.

Congress had in view historical practices of religions whereby ministers of all denominations preach, not only from the pulpit, but also upon the streets and from door to door. Congress intended to include all kinds of religious preaching and not restrict it to any one practice, and especially that of the itinerant ministers who are the only source of religious instruction for over 70 million people in this country.

The act uses the term "as embodied in the creed or principles of such church, sect, or organization." This shows that Congress had in mind the history of religion. History of religion, especially of the Christian religion, shows that preaching has never been confined to the pulpit. It extends to aggressive preaching in the streets, in the parks and from door to door. It includes preaching in the homes to many, when invited or with consent of different small groups. It covers any means or place where the good news of God's kingdom can be taught.

Both Biblical and secular writings show that the Christian church began with itinerant ministers. They preached to the people at the doors, in the homes and upon the streets. They spoke also to great multitudes at the seashores and in the market places. Ancient, medieval and modern history of the different Christian faiths shows that these primitive methods have never been abandoned. These methods of the Founder of Christianity are still ready instruments and potent forces of all the different religions.

A study of religious history shows that preaching is not confined to the use of the oral word. Preaching, in modern times, has reached out to include the written word. Books, booklets and pamphlets, containing written sermons, are the ready and effective instrument of the modern missionary, evangelist and minister. Congress had in mind protecting this method of preaching. There is nothing in the history or the act to show that it was not included.

All methods of preaching were included by Congress. Besides that the ecclesiastical determination by Jehovah's Witnesses on the use of literature as an aid to or substitute for the oral sermon is binding on the Government. None was left out of the exemption granted by Congress.

V.

Benefits received by the federal Government from the work of all religion in this country were know to Congress and because of them Congress intended to reciprocate by giving to the words "vocation," "preach" and "teach" as broad a meaning as is reasonably possible so as to protect all religions.

The work of the itinerant minister, as well as that of the pulpit preacher, bears burdens that otherwise would fall upon the Government. The value of the work these take off the shoulders of the Government cannot be estimated in dollars and cents. It is so very great that it calls for a reciprocal attitude of generosity and liberality from the Government toward religion where laws favoring religion are concerned.

This rule of generous construction applies to the construction of the act, enforcement of the exemption and the term "vocation" used in the definition of the term "minister of religion" appearing in the act.

Two

Under the statute and regulations it is the duty of this Court to hold that the ecclesiastical determinations made by Jehovah's Witnesses on where and how petitioner preaches is binding on the draft boards, the Government and the courts.

I.

The law frees all religious organizations from every governmental inquiry and judicial control of religious matters relating to the ordination of ministers and the manner and the place of their preaching.

Suppose Congress had not expressly provided that it was up to the judgment of each different religious organization to say what shall constitute the qualification of its ministers and the method of their preaching. Still it should be and the Court would read that right into the act.

Congress left all ecclesiastical decisions on qualification of ministers and method of preaching up to the religious organizations. This was done expressly. It said: "as embodied in the creed or principles of such church, sect, or organization."

Had Congress remained silent on such matters it would still be the same. The law of the land is that such issues are not for the Government. They are for the religious organization to decide. Their decisions are final, both under common law and under the Constitution.

II.

Under the act and the regulations the Government is not permitted to make an assault on the ecclesiastical decisions of any unorthodox and unpopular religious organization and deny rights under the act and regulations to a minister of that group by making an illegal invasion of the religious field reserved to the governing body of the church. It, as it has done, cannot fix tests of heresy. The Government cannot by law seek to compel religious conformity in violation of the above-stated rule of religious immunity and the commands of the First Amendment of the United States Constitution under the guise of enforcing the draft law.

Whether a religious group shall confine its membership to its ministry (as do all missionary societies) is a religious prerogative and decision that cannot be questioned by the Government. If a religious group decides to do its main preaching to the "lost sheep," such as the 70 million non-church members in the United States, by going to them at their homes, then that is an ecclesiastical determination. It too cannot be questioned by the Government. That a religious group decides to concentrate its preaching methods on those used by the primitive Christian church—door to door, in the homes and upon the streets—so as to reach the poor rather than confine their preaching to the pulpit methods of the clergy of the rich churches, is also an ecclesiastical determination. It also cannot be questioned by the Government.

It is beyond the competency of this Court or the Government, according to the decisions of this Court, to question the religious practices of any group, so long as they do not violate the law of morals, break into overt acts against peace and order of the community or invade the property rights of others. To permit the Government and the Selective Service System to do here what the Court has said they cannot do would be to resurrect the heresy tribunals of the inquisition. Yet they are condemned by Congress and the Constitution!

III.

If the act and regulations are construed so as to allow the Government, the draft boards and the courts to invade the ecclesiastical decisions of religious bodies and apply principles of religious conformity in determining who is qualified as a minister then, as construed and applied, the act and regulations will discriminate and be in conflict with the First Amendment of the United States Constitution prohibiting the establishment of a state religion and forbidding the abridgment of any rights to freedom of religion.

It would be unreasonable to interpret the law so as to let the Government act as a religious censor of ministers and preaching by religious organizations under the act. This Court must not construe the law so as to make it unreasonable. To do what the Government wants done is to produce absurd consequences and injustice. It will produce unconstitutional results by discrimination between religious organizations. It would set up orthodox state-church principles in violation of the separation clause of the First Amendment. Also it would abridge the freedom-of-religion clause of that Amendment. The interpretation the Government asks this Court to give to the statute should be rejected.

Three

The uncontradicted and unimpeached documentary evidence in the draft board file showed that petitioner pursued his ministry as his vocation. The denial of the ministerial exemption, therefore, is arbitrary, capricious and without basis in fact.

I.

The facts showed that petitioner was a full-time minister, known as a "pioneer." He preached in his missionary field as his vocation.

Petitioner showed that he was a recognized minister of a recognized religion. He was engaged in the full-time missionary work of Jehovah's Witnesses, known as a "pioneer." This was eleven months before his first classification on July 30, 1950. He showed he had quit full-time secular work and went into the full-time ministry before his first classification. At the time he made the change he had not been classified by the board. His liability under the act had not been determined before he made the ministry his vocation.

The undisputed evidence showed that he had been ordained. It showed that he was preaching in accordance with the creed and principles established by the religious group that he represented. He met the requirement of the statute in every respect. His ministry was his vocation.

The local board found that he devoted his full time to the work of his ministry. There was no dispute that he pursued the ministry as his vocation. The papers in the record before the board and the undisputed evidence showed this. There was no question of weighing evidence.

The denial of the exemption was without basis in fact. This is as much so as if he had shown, by undisputed evidence, that he was a judge, a congressman or a governor and then was denied the rights given to those offices. No fact question was presented to the courts below. Only legal questions as to interpretation of the law and applying it to the undisputed evidence were involved. The denial of the exemption was without basis in fact.

II.

The performance by petitioner of part-time radio repair work incidental to his vocation of the ministry does not constitute basis in fact for the denial of the exemption as a minister of religion.

III.

That Dickinson occupied another office as a minister in the organization of Jehovah's Witnesses, the presiding minister of the Coalinga, California, Congregation of Jehovah's Witnesses, incidental to his work as a pioneer minister, does not affect his vocation as a full-time pioneer minister of Jehovah's Witnesses.

IV.

Nothing said in the opinion of the court below about this status of petitioner as a full-time pioneer minister prevents his classification as a minister of religion based alone on that activity.

The contention of the Government that petitioner is a mere book peddler and not a minister should be rejected. The act rejects the argument. The doctrine of finality of ecclesiastical determinations of a religious organization established by this Court destroys the argument of the Government. The method of preaching by petitioner was fixed by the doctrine and creed of Jehovah's Witnesses. It cannot be questioned. The choice and determination of the group under the act and the law of the land is final and binding upon the Government and the Court.

Other ministers of other religious organizations that confine themselves to preaching by distribution of literature, as colporteurs—as well as Jehovah's Witnesses—are exempted from training and service. This administrative determination should be adopted by this Court. If it is applied here the Government will be found to be properly out of court on its illegal contention.

The attack made by the court below upon the ordination ceremony of petitioner and Jehovah's Witnesses was ill-mannered. It was contrary to law. The holding was beyond the authority of that court. The ecclesiastical determination by Jehovah's Witnesses as to the ordination ceremony for its ministers is binding on the courts. That

it was identical to the ordination ceremony of Christ Jesus, his apostles, his disciples and all the ministers of the early church left the court below without grounds to ridicule it. The ultra vires comments of the court below do not hurt the legal standing of petitioner under the act and the regulations.

The documentary evidence submitted by petitioner to his draft board that was prepared by other persons was sufficient. It corroborated his claim for exemption. The draft boards did not question it. They never rejected it. The board was satisfied with it. The court below had no authority to reject the documents. If they were satisfactory to the draft boards they cannot be questioned for the first time by the court after the time to bring in stronger evidence had expired, since the board did not call for it.

The only place the documentary evidence submitted could be questioned was in the draft boards. This was the only tribunal where he could answer or offer evidence. The administrative tribunal did not call for stronger proof. It seemed to be satisfied with what he submitted. Now it cannot be contended (when he cannot answer *nunc pro tunc* and supply stronger evidence) that what documentary evidence he submitted was not sufficient.

The court below went outside the record and the law. In this it found another arbitrary and capricious ground to assault the standing of petitioner. It declared that petitioner was not on a certified list of Jehovah's Witnesses at the Washington headquarters of the Selective Service System. This point made by the court below was ridiculous. The list referred to was made under the 1940 Act. It was frozen in the winter of 1941-42. After that no names were added to it. It was completely defunct after the 1940 Act expired.

No such list exists now. None was required or prepared under the 1948 Act. The absence of Dickinson's name from the list was no more relevant to this case than not having his name in *Who's Who!* Yet the court below manufactured the ground. This performance of the court below as basis

for affirmance of the conviction was without a permit under the Constitution, the act or the regulations.

Youthfulness of Dickinson was next raised by the court below. It said that was basis in fact for the denial of the exemption. The act and the regulations do not make this an element of any exemption or deferment. It was never raised by the draft boards. It was not a factual basis for the denial. The act provided for an 18-year-old man to claim the exemption. Congress, therefore, closed the mouth of the court below. It has no right to rewrite the law and change the regulations fixed by Congress. The limit of authority of the court below was to read the law straight and then apply it. It had no right to legislate new provisions in the law.

That Dickinson appeared before the local board is no support for the assault by the court below against his youthfulness either. To begin with the local board did not complain about or rely upon the youthfulness of Dickinson as a basis for denial of his ministerial exemption.

It is significant that even the local board (it actually saw Dickinson) did not say anything about his youthfulness. The youthfulness of Dickinson is immaterial. If he was old enough to register under the act he was old enough to claim the benefits of exemption for ministers under the act. Congress settled the question so strenuously debated by the court below. Youthfulness under the law is entirely moot to the case.

Four

Failure of the local board to make a full summary of oral evidence given by Dickinson upon personal appearance about his change in status deprived petitioner of a full and fair hearing before the district appeal board, which was not cured by later letters to the National Headquarters of the Selective Service System.

ARGUMENT

One

A proper construction of the statute and the regulation exempts all ministers of all religious organizations preaching, as their vocation, the doctrines of their churches. This exemption prevails regardless of part-time secular activities pursued as an avocation incidental to their ministry.

I.

A brief discussion of the legislative history behind the 1948 Act shows an intent to make the exemption broad and liberal.

The present act is similar to the regulations under the 1917 Act. (Selective Service Law of 1917, 40 Stat. 76, 50 U. S. C. § 226) It is slightly different from the 1940 Act. (54 Stat. 887, 50 U. S. C. App. §§ 301-318) The difference is that the 1948 Act adds to the 1940 Act the provisions of the Selective Service Regulations under the 1917 Act. The regulations under the 1917 Act required that ministers who pursued the ministry as their vocation be exempted by the law. They could not, however, be exempt by preaching as an avocation.—Selective Service Act of 1948, 62 Stat. 624, § 16(g), 50 U. S. C. App., Supp. V, § 466(g).

The ministerial exemption of the 1917 Act was commented upon in Congress when the act was considered. Spokesmen for the bill stated that the exemption was for a special purpose. It was to avoid taking the minister "away from his congregation." Congress intended to leave someone at home "to preach to the people, to bury the dead, and marry the youth of the land." (*Congressional Record*, Vol. 55, pp. 963, 1473, 1527) General Crowder, the Provost Marshal General, gave testimony before the House Committee on Military Affairs. He said that the ministerial exemption was a legislative exemption. It was an exemption. He said it was not a deferment by the executive branch of

the Government.—*Congressional Hearings,* 65th Congress, 1st Session, pages 94, 95.

The 1940 Act provided for the exemption of ministers of religion. There was no detailed definition in the act. (54 Stat. 887, 50 U. S. C. App. § 305) Section 622.44 of the Selective Service Regulations under the 1940 Act explicitly defined the terms "regular minister" and "duly ordained minister." They implemented the act. (32 C. F. R. § 622.44 (b))—See also *Cox* v. *United States,* 332 U. S. 442.

Congress intended in that act to provide for a very broad and liberal interpretation of the term "minister of religion." (See the letter of Congressman Martin J. Kennedy to the House Committee on Military Affairs.) There was a definite intent to exempt all full-time ministers, whether they were lay brothers, ministers performing administrative duties or clergy preaching from the pulpit.—See *Hearings before the Committee on Military Affairs,* House of Representatives, 76th Congress, 3rd Sess., on H. R. 10,132, at pages 299-305, 628-630, APPENDIX to this brief, pp. 1-5.

General Hershey, National Director of Selective Service, stated the attitude of Congress. He said there was "a natural repugnance toward any proposal for drafting ministers of religion for training and service." (*Selective Service in Wartime* (Second Report of the Director of Selective Service 1941-42), p. 239, Washington, Government Printing Office, 1943) The purpose of the exemption appearing in the 1940 Act was stated by the United States Court of Appeals for the Second Circuit in *Trainin* v. *Cain,* 144 F. 2d 944 (1944). The reason was to prevent "disruption of public worship and religious solace to the people at large which would be caused by their induction."—144 F. 2d at p. 949.

The above legislative history shows a national policy to exempt ministers. This policy was expressed in both the 1917 Act and the 1940 Act. This showed a broad and liberal exemption intended by Congress to protect ministers. Concerning the administration of the ministerial exemption under the 1940 Act, General Hershey, the National Director

of Selective Service, said: "The determinations of this status by the Selective Service System have been generous in the extreme."—*Selective Service in Wartime* (Second Report of the Director of Selective Service 1941-42), p. 240, Washington, Government Printing Office, 1943.

It can be seen that Congress intended to be fair and liberal in its exemption of ministers of religion from military training and service.

II.

The 1948 Act shows a continuing congressional intent to give a broad and generous exemption to ministers, so long as the ministry is pursued by them as their vocation.

The only difference between the 1940 Act and the 1948 Act is that the 1940 Act did not require that the ministry be pursued as a vocation. The 1948 Act was specifically changed. It made the definition of a minister identical to the definition appearing in the Selective Service Regulations under the 1917 Act. The Report of the Senate Committee on Armed Forces stated that the definition of the terms "regular or duly ordained minister of religion" appearing in the act were defined in § 16(g). (See APPENDIX, p. 43.) Concerning the definition the report said: "The definition is that which was contained in the 1917 Selective Service Regulations, and which was successfully administered without the problems which arose under the 1940 Act."—Senate Report No. 1268, 80th Congress, 2nd Session, page 13, APPENDIX, p. 43.

To be a "duly ordained minister of religion" under the 1948 Act, certain things must appear. First is that the person be ordained. Second is that he be ordained in accordance with some religiously established discipline. Third is that he be ordained to preach the doctrines of a church or organization and to administer the ceremonies in public worship. Fourth is that he pursue his ministry as "his regular and customary vocation," preaching the principles

of his religion and administering the ordinances of public worship of his church.—62 Stat. 604, 624, § 16(g), 50 U. S. C. App., Supp. V, § 466(g).

A "regular minister of religion" under the act was also defined. Congress said that a man was a "regular minister of religion" when he taught the principles of his religion without having been formally ordained. (62 Stat. 604, 624, § 16(g), 50 U. S. C. App., Supp. V, § 466(g)) Congress in this section specifically limited the definition of the term "regular or duly ordained minister of religion." It said that it did not include a man who preaches incidentally the principles of his church, either as a regular or duly ordained minister. Congress added that it did, however, include every minister who preaches, either as a duly ordained minister or as a regular minister, the principles of his church "as a vocation."

Please notice that Congress in the report of the Senate Committee on Armed Service stated that the exemption was limited to the "leaders of the various religious faiths, and not for the members generally." (Senate Report No. 1268, 80th Congress, 2nd Session, page 13) It is plain from this report that Congress intended to exclude those who were not full-time ministers or not leaders of religion. Congress intended to exclude all the laymen but none of the full-time ministers.

The word "leader" used in the Senate report must be specifically qualified by the definition of "minister of religion" appearing in the 1948 Act. The definition in the act specifically exempts a minister who preaches his religion as his vocation.

The use of the word "leader" in the Senate report appears to be irrelevant to the act. This is especially true since the report specifically adopted the definition appearing in the act. The definition is clear. It is not ambiguous. There is no indefiniteness in the terms of the act. It does not use the word "leader." Since the definition is clear and not vague, the word "leader" used in the report cannot be

read into the act, unless "leader" is synonymous to the words "minister of religion." A man who pursues his ministry as his vocation may properly be said to be the "leader" in his religion. This is so regardless of the name or nature of his denomination and where or how he preaches.

The word "leader" alone used in the report of the Senate Committee on Armed Service (Senate Report No. 1268, 80th Congress, 2nd Session, page 13) may not be used to qualify or to abridge the definition appearing in the act. One reason is the report adopted the definition used in the act. It made the term a part of the report. The other reason is very well expressed by this Court in Ex parte *Collett*, 337 U. S. 55, at page 61.

The word "leader" in the report of the Senate Committee (as legislative history) is not controlling. The reason is that there is no ambiguity in the statute. The report standing alone is ambiguous. The only way the report can be clearly understood is by reading the language appearing in the statute, which the report adopted. The definition is clear. It was specifically relied upon by the Senate committee in its report. The definition appearing in the statute, therefore, must be taken for what it means. All the Court has to do is to read the statute and give to the words their usual and ordinary meaning. Give plain meanings to the words used in the light of history of religion. Then it is clear that Congress had in mind exempting all ministers of all religions who pursue their ministry as their "vocation."

Even assuming the word "leader" were considered to be a part of the statute and that Congress had in mind the clergymen as "leaders" of a flock of laymen, this would still mean that the word "leader" was synonymous to the word "minister." It still would include evangelists and missionaries. They are ministers. They are leaders in their organization. They, like the street evangelist and the itinerant missionary, lead laymen in their field by instruction at home and on the streets. They preach. By preaching

they are "leaders." It is apparent that even when the word "leader" is used it does not confine the exemption to a preacher who preaches from a pulpit to a lay congregation. Congress had in mind by use of the term "minister of religion" to exempt *any* minister in any religious organization who *preaches* the doctrines of his church *as his vocation*. This is so regardless of where or to whom he preaches as a leader.

The Government limits the word "minister" used in the statute to a minister who preaches from the pulpit to a congregation of laymen under one roof. This is an illegal rewording of the statute. It excludes the ministers preaching the doctrines of their churches as their vocation and who have congregations under many roofs or no roof, the open street.

Today, as throughout history, many ministers are missionaries and evangelists. They have congregations only in the homes of the people. There they administer to the spiritual needs of their missionary flocks.

There is also the street preacher. His congregation is rarely, if ever, composed of "members" of his church. It is never fixed. The definition the Government gives the Court would exclude these thousands of ministers in the United States.

A reasonable reading of the act does not permit this clouding of the congressional intent. Congress certainly intended to protect the full-time minister of every religious organization. This is true even though he never preaches to a fixed congregation anywhere. It is not necessary that the listeners be members. The people hearing him may be nonmembers of his church.

This broad interpretation is proved by the protection in the act for leaders who are executives in religious organizations. Congress intended to protect administrators of every religious organization. These administrators are either ordained or regular ministers. They usually never preach. They have no congregations. Yet they are "minis-

ters" or "leaders" in their churches. They are administrators of their churches. This is also the case where bishops and archbishops of the Catholic Church and the Anglican Church are involved.

The practice of many churches is to have clergymen or ministers performing administrative functions. They also teach in colleges. Do these men, therefore, cease to be exempt as ministers because they are not regularly serving a congregation? In neither case would the men serving in that capacity lose the protection of the statutory exemption. In short, every church has the right to have ministers. It should be free to appoint them to whatever function they are needed within the organization. If the regular minister of one church places men in functions different from some other religion, the law is not concerned. The law will not tell the various denominations how to operate their internal affairs.

Lay brothers of the Catholic Church are not priests or "ordained" ministers. None has a congregation. None preaches from the pulpit. As a class, as regular ministers, they perform duties of a menial nature. They are not executives. They are "administrators" of the lowest type in the Catholic Church. They never conduct religious services or perform any religious rites of any kind of a sacerdotal nature in the church.

Never do the lay brothers perform any act that is a part of all religious services in any Catholic Church. They are "unable to attain to the degree of learning requisite for holy orders," but are "able to contribute by their toil" and are "able to perform domestic services or to follow agricultural pursuits."—See *The Catholic Encyclopedia*, Vol. 9, p. 93.

Lay brothers are regular ministers of religion under the act. In State Director Advice 213-B, as amended September 25, 1944, General Hershey, National Director of Selective Service, said:

"It appears that Catholic Brothers have made

> profession of the vows required of them by their respective religious Congregations, such as poverty, chastity, obedience, and are said to devote all their time to their Congregations. Moreover, when the Selective Training and Service Act was being discussed in Congress, it was made clear that it was intended that the Brothers were included in the purview of the statutory exemption from training and service of regular ministers of religion. It is believed that they are and should be considered 'regular ministers of religion.'"

Special emphasis should be put on the term "regular minister of religion" used in the act. This shows an express intent on the part of Congress to protect all full-time ministers, regardless of whether they preach under one roof to those who are members of their church or not. The term "regular minister of religion" is a saving clause for religions. This term was included for the express purpose of protecting all ministers of religion who are not "ordained" ministers of religion.

The term "regular minister of religion" was declared by General Hershey, the National Director of Selective Service, to be a very broad and generous term. He said:

> "The principle was extended to persons who were not, in any strict sense, ministers or priests in any sacerdotal sense. It included Christian Brothers, who are religious, who live in communities apart from the world and devote themselves exclusively to religious teaching; Lutheran lay teachers, who also dedicate themselves to teaching, including religion; to the Jehovah's Witnesses, who sell their religious books, and thus extend the Word. It includes lay brothers in Catholic religious orders, and many other groups who dedicate their lives to the spread of their religion."—*Selective Service in Wartime* (Second Report of the Direc-

tor of Selective Service 1941-42), p. 241, Washington, Government Printing Office, 1943.

This administrative interpretation of the term was adopted in *Hull* v. *Stalter*, 151 F. 2d 633 (7th Cir.). In that case the court said:

> "Selective Service Regulations (622.44) recognize two classes of ministers, (1) a regular minister of religion, and (2) a duly ordained minister of religion. The former 'is a man who customarily preaches and teaches the principles of religion of a recognized [church], religious sect, or religious organization of which he is a member . . .' The latter 'is a man who has been ordained in accordance with the ceremonial, ritual or discipline of a recognized church . . .' The Selective Service System has even more broadly defined the term 'regular minister of religion.' Under the heading, 'Special Problems of Classification' (Selective Service in Wartime, Second Report of the Director of Selective Service, 1941-42, pages 239-241), it is stated: 'The ordinary concept of "preaching and teaching" is that it must be oral and from the pulpit or platform. Such is not the test. Preaching and teaching have neither locational nor vocal limitations. The method of transmission of knowledge does not determine its value or affect its purpose or its goal. One may preach or teach from the pulpit, from the curbstone, in the fields, or at the residential fronts. He may shout his message "from housetops" or write it "upon tablets of stone." He may give his "sermon on the mount," heal the eyes of the blind, write upon the sands while a Magdalene kneels, wash disciples' feet or die upon the cross. . . . He may walk the streets in daily converse with those about him telling them of those ideals that are the foundation

> of his religious conviction, or he may transmit his message on the written or printed page, but he is none the less the minister of religion if such method has been adopted by him as the effective means of inculcating in the minds and hearts of men the principles of religion. . . . To be a "regular minister" of religion the translation of religious principles into the lives of his fellows must be the dominating factor in his own life, and must have that continuity of purpose and action that renders other purposes and actions relatively unimportant.'"

One difference (respecting exemption of ministers) was made by Congress between the 1940 Act and the 1948 Act. It was the requirement that to be exempt the minister of religion pursue his ministry as his vocation. Congress, by the use of the word "vocation" precluded the possibility of any minister who pursued full-time secular work from being classified as a minister, when it appeared that he preached only part-time. Congress intended by the use of the word "vocation" to protect only those ministers who made their ministry their main job.

Let us consider the word "vocation." It is defined by Webster's *New International Dictionary of the English Language*, 2nd Edition, Unabridged, 1950, on page 2854 as follows:

> "Vocation . . . [L. *Vocatio* a bidding, a calling, invitation, fr. *vocare* to call; cf. F. *vocation*. . . .] 1. A calling; a summons; a call; specif.: *a Obs.* Convocation, as of an assembly. *b* A calling to a particular state, business, or profession. . . . 2. Regular or appropriate employment; calling; occupation; profession; as, to change one's *vocation*. 3. The members of a particular calling or profession, collectively. *Rare.* 4. *Theol. a* A calling to the service of God in a particular station or

state of life, esp. in the priesthood or religious life, as shown by one's fitness, natural inclinations, and, often, by conviction of a Divine invitation. *b* The station or state of life to which one receives such a calling. *c* An official invitation to a particular ecclesiastical office, as a pastorate.

Syn.—VOCATION, AVOCATION, HOBBY. VOCATION denotes one's regular calling or profession; an AVOCATION is something which calls one away from one's ordinary pursuits; the word commonly suggests a subsidiary or minor occupation, and its employment in the sense of *vocation* is contrary to good usage . . . A HOBBY is a favorite avocation; the word often connotes a mildly indulgent attitude towards what is regarded as extreme . . . See OCCUPATION."

Read the different draft laws. It seems plain from all of them that Congress did not intend to establish any state church or any group of state churches by fixing what is orthodox. Congress intended to give the exemption of the act to all ministers of all religions, either Christian or pagan, whether supported by white or black or popular or unpopular.

The only criterion Congress imposed upon each such minister was that he pursue his ministry as his vocation. When the minister shows that preaching is his vocation, there is only one answer. He is a minister of religion exempted under the act and regulations. The exemption comes even if he has no cathedral. He should be exempt even if he is without a congregation under one roof. He is exempt when he shows that his ministry is his vocation. His vocation of the ministry makes him a "leader" in his organization. As a leading minister of his group each pursues his work as his vocation. He has been exempted by Congress.

III.

The terms of the act exempting men pursuing ministry as their "vocation" exclude consideration by the draft board or the court of time spent in incidental secular activities, as their "avocation."

The only thing the act requires the minister to show is that the ministry be his "vocation." Nothing is said in the statute about activities he carries on when not preaching. The law allows him to have a sideline. He may have several different interests outside his vocation. These interests often require much of his time not devoted to his vocation. The act exempts the minister because his ministry is his vocation. Then no consideration may be given to time devoted to incidental outside activites, so long as the ministry is his vocation.

To demonstrate the error of the Government's argument (that *incidental* secular work can be the basis of the denial of the exemption) consider other deferments. There are deferments for governors, members of the state legislatures, congressmen, senators and judges of courts of record. (50 U. S. C. App. § 456(*f*), 32 C. F. R. § 1622.41) There are others. Mention of these is enough. In the act and the regulations granting exemption and deferments nowhere does it appear that the incidental time devoted to outside activity is made a basis for the denial of the exemption or deferment.

A judge may live on a farm and run it. In his spare time he may operate a ranch. Both of these jobs take much time when the judge is not on the bench. A congressman or a senator may have some commercial business on the side. Many exempt or deferred persons may spend much time attending to investments. They may watch the stock market reports to judge what to do with their securities. This may take much time. Even a wealthy deferred person who has no need to run a ranch may devote his time away from his vocation to playing amateur golf or to breeding of horses.

He may devote much time to such pursuits when not engaged at his vocation. A congressman may devote much of his spare time to polo playing. This may take all of his time when not working at the job that deferred him from training and service in the armed forces.

A governor may spend his spare time running a coal business. He may engage in playing bridge professionally when not occupied with his duties as governor. In neither case would that be even remotely relevant to his right to deferment, which hinges on his vocation.

It is well known that in some Washington circles certain senators, congressmen and other governmental employees spend many hours weekly at social gatherings and parties. This they do often when out of their offices, during the week and on week ends. The fact these persons devote such time to help them climb up the slippery slope of politics (among other probable reasons) does not in any way affect their deferred status under the draft law. That is dependent upon the vocation which they pursue and not their sideline pursuits.

Recently the public press reported about an ordained minister who has gained world fame as a track star. He has devoted much time to training and participation in amateur competition. By the use of his time outside the ministry he reached the highest of athletic honors, the Olympics. Surely no one would dare say that, because he devoted much of his time when not preaching to training for track competition, such defeated his claim for exemption based on his vocation of the ministry.

A wealthy clergyman may devote all his spare time to caring for investments and collecting rental on real estate. This in no way takes his exemption from him. The only criterion is: Does the minister pursue his ministry as his vocation? It is not: What does he do with his spare time?

A poor preacher of a financially weak congregation often is required to perform secular work to support himself incidental to his vocation of the ministry. Does this bar him

from claiming the exemption as a minister of religion? Not as long as he regularly and customarily teaches and preaches, as his vocation, the doctrines and principles of a recognized religious organization.

The pages of history abound with proof that even ministers of orthodox denominations perform secular work during the week. This they must do as a sideline in order to sustain themselves in their ministry. Today some denominations have no paid clergy at all. Every minister in some denominations is required to perform secular work. Yet, as his vocation, he regularly and customarily teaches and preaches the doctrines and principles of his church as a minister. Upon this point "a page of history is worth a volume of logic."—Mr. Justice Holmes, *New York Trust Company* v. *Eisner*, 256 U. S. 345, 349.

From time immemorial the support of a preacher or minister has not been confined to aid from a congregation capable of supporting him financially. The poor financial condition of the congregation makes it necessary for him to depend on other sources for support and maintenance. In fact, ministers more often than not, especially in the rural sections, are forced to work on farms. They also work in grocery stores and at other secular work to support themselves and their families. This they must do so that they might regularly and customarily preach to their congregations.

The source of a minister's income is wholly immaterial. Whether his congregation is able to provide him with an income sufficient to maintain him is not relevant. Whether he is fortunate, is rich and able to maintain himself from stocks, bonds and property investments is not material. Also whether the minister, like most ministers, may not be financially independent is not material. He may have to depend on his labors for his support. That is also immaterial.

General Lewis B. Hershey, National Director of Selective Service, stated in 1944:

"In some religious organizations both practice

> and necessity require the minister to support himself, either partially or wholly, by secular work."—*State Director Advice 213-B*, as amended September 25, 1944, National Headquarters, Selective Service System.

There are a large number of ministers of Protestant and Jewish denominations who depend for their support upon secular work. In the Northern Baptist Convention twenty per cent of all clergymen in rural sections "help earn their keep by work not connected with their churches."—Hartshorne and Froyd, *Theological Education in the Northern Baptist Convention*, p. 72, Philadelphia, Judson Press, 1945.

Twenty-four per cent of all Protestant clergymen in the United States in 1939 received less than $600 annual salary from their respective churches, of which fourteen per cent received less than $99 annually. "There is nothing to indicate that those in the lower brackets also had other occupations, although it is a safe guess that many of them did."—Landis, *Yearbook of American Churches*, 1945, Federal Council of Churches of Christ in America, Lebanon, Pa., Sowers Printing Co., p. 155; see also United States Bureau of Census, Series P-16, No. 8, 16th Census.

It is well known that the majority of the ministers of the Society of Friends (Quakers), Church of Jesus Christ of Latter-day Saints (Mormons) and Mennonites are not supported by their churches. They and thousands of other ministers of other poor churches are dependent entirely upon secular work for their support. No salary is paid to a large percentage of all American ministers.

It is outrageous to presume that Congress intended to discriminate between the wealthy clergy and the poor ministers. The wealthy clergyman can be exempt although he may spend many hours playing golf and bridge and engaging in extrasectarian activity during the week. He has a wealthy congregation that prevents him from having to

work to support himself. The poor congregation and minister not thus blessed must suffer the penalties of the law. Because he uses the same amount of time working on a secular sideline that the wealthy clergyman uses attending to secular investments so he may stay in the vocation of the ministry, the poor preacher loses his rights!

Surely Congress did not intend to discriminate in favor of the rich congregations and against the poor churches in this country. The poor, small churches in this country outnumber, many times, the wealthy. Congress must have had clearly in view the fact that to protect the churches of the poor it was necessary to allow their ministers pursuing the ministry as their vocation to engage in some sort of secular sideline. They have to have some secular work as an avocation to sustain themselves.

With the knowledge of these facts, surely it must be said that Congress intended to exclude from the consideration of the court and the draft board completely the secular sideline of the ministers unless secular work was the minister's vocation.

When secular work is the avocation, then regardless of such secular work as a sideline there is no basis in fact for the draft board classification denying the exemption based on the vocation of the ministry.

In determining whether there is basis in fact for a draft board determination the draft boards are limited as to what to consider, A claim for exemption or deferment under the act cannot be denied solely by a finding that the minister had other activities on the side. These would not, within themselves, deny such person his exemption or deferment. Suppose the facts establish that such minister comes within the exemption under the act. His incidental side activities or secular avocation are wholly irrelevant and immaterial to his exempt status.

Let the Court again be reminded that the determination of the law that draft boards and Selective Service officials

have no right and duty to deny exemption because of the part-time activities of those who make the ministry their vocation. If the officials can do this inquisitorial act to one organization, they can do it to all of them. Selective Service officials will become an army of religious spies following all preachers around to find out how much time they play golf and how long the wealthy ones spend checking on securities, collecting rents, writing books or other such activities.

The Court then must prepare itself to try the activity of every lay brother who looks after cattle or makes wine at a monastery, of every priest who helps print or censor propaganda, every minister who teaches at a theology school or who acts as registrar or administrative officer of such institution. It would put on the Selective Service System the burden of spying and snooping into the life of every minister.

If it is illegal for a minister to have a part-time avocation of a secular job, then it is equally illegal and destructive of his exempt status if the minister has an avocation of playing golf, operating a farm or engaging in athletic contests.

If devoting time to an avocation destroys the exemption of a minister, then the draft officials will also have to spy on senators operating a private law practice, judges playing bridge and congressmen going to cocktail parties. Instead of public servants in a free country the Selective Service System will become a new gestapo! Ridiculous you say! It is just as ridiculous as the poisonous argument the Government has put in a capsule to feed this Court. It is the natural outworking of accepting the Government's contention.

It is respectfully submitted that Congress intended not to permit the courts or the draft boards to nullify the intent expressed in the word "vocation" by an inquiry into the slight and inconsequential time devoted to the secular avocation of this minister of religion.

IV.

Congress had in view historical practices of religions whereby ministers of all denominations preach, not only from the pulpit, but also upon the streets and from door to door. Congress intended to include all kinds of religious preaching and not restrict it to any one practice, and especially that of the itinerant ministers who are the only source of religious instruction for over 70 million people in this country.

Many different methods and customs of preaching will be found exposed in the pages of history. From the first organization of the Christian system through the medieval period down to modern times this appears. Any well-informed student of church history knows that there has never been any fixed or consistent form of preaching or religious practice.

The records of the nations run red with blood because of those who sought to impose fixed religious standards upon their victims. These bloody tragedies of history, such as the Thirty Years' War and the evils of the Inquisition, were preludes to constitutional guarantees of religious liberty. The Constitution refuses to allow Congress or anyone else to establish by law or administrative fiat any form of religion, as fixed or government approved. Congress knew these things. That knowledge of religious history is reflected in the act. The refusal of Congress to define any set mode of preaching or manner of appointing ministers or where they shall preach is significant.

Congress did not brush aside this religious history of the world. That Congress did not say what was "preaching" and "teaching" proves that it had in mind the different methods of preaching shown in the history of the Christian church.

Congress knew the history of all the present Christian religious denominations in the United States. It knew their background. Knowledge of historical practices and customs of the early Christian church, the medieval church and the

modern church was in view of Congress when the law was written. It was well informed on religious history. Congress knew that there could be no fixed religious belief or religious practice. Congress knew all are different. It had in mind making the law broad enough to cover all methods of religious preaching of all denominations. Congress intended to act in harmony with the Constitution and the practice of toleration shown by the history of this country.

Now briefly there shall be reviewed the history of the Christian religion for the purpose of showing the type of religious practice Congress must have had in mind when the exemption was written into the act. For a more detailed statement of this religious history see the APPENDIX, pages 45-52.

The Scriptures show that the apostles and disciples of Jesus preached publicly on the streets and also from house to house. (Acts 20:20) The apostles and disciples of Jesus taught in this manner throughout the Mediterranean world. Jesus commanded his disciples to "Go ye therefore, and teach all nations, baptizing them in the name of the Father, and of the Son, and of the Holy Ghost." (Matt. 28:19) No informed person or Bible scholar will dispute that the church of Christ refused to confine their preaching to the temple. They went into the highways and byways.

Jesus "went round about the villages, teaching." (Mark 6:6) Three times he made trips through Galilee. He also went into other parts of Palestine. No one will deny that the "Sermon on the Mount" was not delivered in a cathedral. It was preached in the open air.

In addition to the large open-air audiences to which Jesus preached, he also preached in the homes and by a public well. He sent out seventy evangelists to preach through Judea. (Luke 10:1) Thousands of disciples of Jesus likewise preached publicly and in the homes of Jerusalem. They were led by Paul, Barnabas, Timothy and other disciples.—Acts 5:42.

From the very earliest period the Christian church had

an itinerant as well as a local ministry. Both were recognized as vital in the establishment of the faith. All were recognized as ministers. The itinerants were officials in superior positions to those of the local ministry. The local ministers were chosen and appointed by the itinerants. Paul gave instructions to the young man Titus who was a traveling minister: "For this reason I left you in Crete, that you might correct the things that were defective and might make appointments of older men in city after city, . . ." —Titus 1:5, *New World Translation.*

No one can contend that the pulpit-in-cathedral preaching method since that time—regardless of how orthodox it may be—now has a position superior to the primitive method pursued by Jesus and his apostles. It is unreasonable to assume that Congress intended to condemn the primitive practices of Christ, his apostles, and the disciples.

The practice of many churches is to have clergymen or ministers performing administrative functions. They also teach in colleges. Do these men therefore cease to be exempt as ministers because they are not regularly serving a congregation? In neither case would the men serving in that capacity lose the protection of the statutory exemption. In short, every church has the right to have ministers. It should be free to appoint them to whatever function they are needed within the organization. If the regular ministry of one church places men in functions different from some other religion, the law is not concerned. The law will not tell the various denominations how to operate their internal affairs.

Congress knew of the great part played by such itinerant ministers in American and English history. It certainly did not intend to discriminate against them.

The itinerant ministry is associated with the works of some of the greatest English and American clergymen and reformers. Wesley, Calvin, the Jesuits and many other important religious reformers have used house-to-house ministers to advance their religious endeavors.

It is now too late in the day to say that such ministry is not a recognized part of the religious life of the English-speaking world. It is well known and is protected by law.

Congress has provided for the regular or duly ordained ministers of all religions. It did not say: 'any religious denomination that has one minister attached to one congregation.' To say so would be to establish a state church of orthodoxy and deny the rights of those who have played an influential and useful part in the history of the nation. Congress has not so limited the statute and certainly this Court should not do so.

The practice of having an itinerant ministry as well as a pulpit ministry has a long and historically honorable record. Congress knew this. It must be deemed to have made a reasonable provision for such religious practices, the same as it did for other forms of religious preaching. The basic purpose of the exemption to give the influence of Christianity and its moral effect to the people has been shown. It has been very effectively served by such ministers. It would sabotage the true purpose of Congress not to allow ministers doing this very useful work to receive the protection contemplated. The itinerant ministers of the nation are engaged in a ministry that reaches a great class of people not otherwise touched by Christian pulpit preaching. In this activity they are entitled to the benefit of the statute designed to protect such activity and to save for the people the helpful influence of such works of charity.

Few, if any, orthodox religious pulpit clergy preach in the streets or at the homes. They depend upon the people coming to them. They do not go to the people with the Word of God.

Suppose that all churches should become vacant. Assume the lay attendants leave the minister in his cathedral without an audience. Then there would be a clear and present necessity of a back-to-the-church movement. The only way that the orthodox clergy could revive the people or get them back to church would be to preach from door to

door. They would have to preach primitively as did the Lord Jesus Christ and his apostles.

The orthodox clergy in the pioneer days in this country actually called from house to house. They preached publicly on the streets in order to establish their churches in this nation. Even to establish a new church in a new community today it is necessary to seek converts or attendants at church by calling from door to door. It is, therefore, proper to assume that Congress had in mind this ancient and primitive method of preaching as a necessary means to preserve religion in this country.

Surely the regularly ordained clergymen with a congregation of lay members would not cease to be a clergyman because his flock quit coming to church. He would be exempt if he preached his sermons as did the Lord Jesus Christ and the apostles from door to door. Certainly the Government would not have the audacity to contend that if he did preach thus (after losing his congregation) he would lose his exemption as a minister of religion, because he was not preaching from a pulpit to a crowd gathered in his temple or cathedral.

The place in history of public preaching has been judicially recognized in the Scottish case, *Hutton* v. *Main*, (1891) 19 R. (J.) 5. Lord Justice Clerk said:

> "Street preaching is a familiar thing. Respectable persons gather, sing in order to attract the attention of those near, and thereafter preach to them. Other meetings in the open-air within burgh are equally free and informal."

The practice of preaching publicly from door to door is as old as the history of the Christian church. It has continued through the Middle Ages down to modern times, a potent force in religious endeavor. This Court has found that orthodox as well as unorthodox denominations have used it effectively. The Court has said that such practices have the same high estate under the American Constitu-

tion as preaching in churches and cathedrals. (*Murdock v. Pennsylvania*, 319 U. S. 105, 109) They have been an effective and potent force in the religious life of the nation for centuries.

The argument of the Government that religion should be confined to the cathedrals, temples, church buildings and other privately-owned edifices flouts ancient and modern history. It also defies the religious need of the people of this nation. There are 70 million in this land who do not belong to any religion or attend church.—Landis, *Yearbook of American Churches*, 1952, p. 234.

Among the millions of church members there are millions who do not attend church. How would these millions of persons who do not attend church be comforted in sorrow, spiritually fed or educated by the Word of God if it were not brought to them by the evangelist at their homes?

The people would be left godless and without a knowledge of God's purposes were it not for the missionary evangelist. He takes the Word of God to these lost sheep by calling upon them at their homes. Also he preaches to them publicly on the streets. There is a clear and present necessity of legal protection of these millions by exempting the missionaries and evangelists who are willing to take religion to these people. The people have failed to take to religion. This is through failure to go to the religious edifices to be educated.

This modern need of the itinerant minister to keep up the religious morale of the people is well stated by J. Benson Hamilton, who said:

> "For reasons that need no explanation a large class of our people have a prejudice against our churches. They will not attend divine service in them whatever may be the attraction. To such the gospel must be preached by the way-side, on the street corner, at the sea-shore, in the mountain, in the woods."—*Empty Churches and How to Fill Them*, p. 64, New York, Phillips and Hunt, 1879.

The evangelist and missionary doing ministry work in the homes of the people in this land are meeting the needs of these millions. The itinerant ministers do as much, if not more, to maintain the morale of these many millions of churchless people than do the clergy with a numbered flock of members who speak from the pulpit.

The argument of the Government, therefore, is devastating to all religion. It is contrary to the Constitution. It defies the clear intent of Congress to be liberal and fair to all religions in the enforcement of the act. History and the need of millions for the service of the door-to-door evangelist, therefore, support the proposition that Congress must have had in mind the protection of the work of all ministers, peripatetic as well as pulpit, under the statute.

V.

Benefits received by the federal Government from the work of all religion in this country were known to Congress and, because of them, Congress intended to reciprocate by giving to the words "vocation," "preach" and "teach" as broad a meaning as is reasonably possible, to protect all religions.

The preaching activities of ministers of religion and evangelists bear burdens that ordinarily fall on the Government. They do work of an eleemosynary comforting nature. The Government would be required to do this if there were no religions. The Government would be required to impose additional taxes. It would have to make heavier demands on all the people. It may have to draft people to do the work of charity. Christian preaching to the people of this land does what the Government could not possibly do.

The value of the moral restraints placed upon the people by the work of ministers and evangelists cannot be limited. An invaluable sense of personal duty to principles of justice and righteousness results from the work of ministers of all religions. It is not confined to the general populace. Politicians, officials of government and all public officers are

constantly reminded of this sense of responsibility to these principles that comes from preaching.

If democracy is to last, ministers must be kept free from compulsory military service. The dry-rot of internal corruption has destroyed some of the greatest nations on earth because of lack of Christian principles. Preaching and proselytizing the people through the Word of God is an insurance against barbarism and disintegration of the nation.

Godless communism, which makes the worship of the state the religion of the people, condemns the exemption of ministers of religion from military service. But such is not the concept of this democratic state.

The Government cannot treat the work of house-to-house missionary evangelists as a matter of no great moment. Their work is a matter of national importance that contributes to the welfare of the nation as much as the work of the orthodox clergy preaching from the pulpit. Their charitable works "constitute not only the 'cheap defense of nations,' but furnish a sure basis on which the fabric of civil society can rest, and without which it could not endure." —*Trustees of First M. E. Church South* v. *Atlanta*, 76 Ga. 181, 193.

Exemptions in favor of religion have always been given a broad and liberal interpretation.—*Trustees of Griswold College* v. *State*, 46 Iowa 275; *Watterson* v. *Halliday*, 77 Ohio St. 150, 82 N. E. 962; *Mattern* v. *Canevin*, 213 Pa. 588, 63 A. 131; *Congregational Society of Town of Poultney* v. *Ashley*, 10 Vt. 241, 244; see also *Saskatchewan Ruthenian Mission* v. *Muldore*, (1924) 2 D. L. R. 633, 635.

It is respectfully submitted that the exemption in the statute should be construed liberally to give all ministers who pursue the ministry as their "vocation" freedom from service. To interpret the statute so as to cover only the orthodox clergy, and not the evangelist and missionary, is to discriminate. This would violate the principle of "equal justice under law."

Two

Under the statute and regulations it is the duty of this Court to hold that the ecclesiastical determinations made by Jehovah's Witnesses on where and how petitioner preaches is binding on the draft boards, the Government and the courts.

It is the contention of the Government (so as to put petitioner outside the protecting walls of the law) that both the draft boards and the courts may compare the religious practices of Jehovah's Witnesses with those of the more orthodox organizations. It is also said that by using this comparison a determination can properly be made that the peripatetic ministers of Jehovah's Witnesses are not entitled to the exemption granted under the act and regulations. The reason urged by the Government is that such ministers of Jehovah's Witnesses do not fit the orthodox pattern. The answer made by the petitioner is that the Government, the draft boards and the courts may not inquire into the propriety of the manner, place and the method of preaching done by petitioner. This is an ecclesiastical determination that has been made by the governmental body of Jehovah's Witnesses. It is binding upon all. It is not subject to either direct or collateral attack by the Government in a draft board proceeding or in any prosecution under the act. This is an internal ecclesiastical position which is unassailable. It is unreviewable by any of the governmental agencies.

I.

The law frees all religious organizations from every governmental inquiry and judicial control of religious matters relating to the ordination of ministers and the manner and the place of their preaching.

From the very beginning of the common law a realistic approach to the enforcing of statutes involving religious organizations has been made. Read *Thornton* v. *Howe*, 31

Beavin 14. In that case Sir John Romilly said that the law makes "no distinction between one religion and another. . . . Neither does the court, in this respect, make any distinction between one sect and another."

After the Civil War this Court held in *Watson* v. *Jones*, 13 Wall. (80 U. S.) 679, that it was beyond the competency of the courts or any governmental agency to inquire into ecclesiastical determinations made by a religious organization. In that case this Court said:

> "The full and free right to entertain any religious belief, to practice any religious principle and to teach any religious doctrine which does not violate the laws of morality and property and which does not infringe personal rights, is conceded to all. The law knows no heresy and is committed to the support of no dogma, the establishment of no sect."—13 Wall., at p. 728.

Commenting on this holding recently, this Court said in *Kedroff* v. *St. Nicholas Cathedral*, 344 U. S. 94:

> "The opinion radiates, however, a spirit of freedom for religious organizations, and independence from secular control or manipulation, in short, power to decide for themselves, free from such interference matters of church government as well as those of faith and doctrine. Freedom to select the clergy where no improper methods of choice are proven, we think, must now be said to have federal constitutional protection as a part of the free exercise of religion against state interference."—344 U. S. 94, at p. 116.

Some time after the decision in the case of *Watson* v. *Jones*, 13 Wall. (80 U. S.) 679, this Court decided *Gonzalez* v. *Archbishop*, 280 U. S. 1. In that case there were involved rights to a chaplaincy under a will. The point for determination was whether he possessed the qualifications as heir.

The Court held that the qualification order of the church was beyond question by anyone other than the ecclesiastical hierarchy making the decision. The Court said:

> "Because the appointment is a canonical act, it is the function of the church authorities to determine what the essential qualifications of a chaplain are and whether the candidate possesses them. In the absence of fraud, collusion or arbitrariness, the position of the proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive, because the parties in interest made them so by contract or otherwise. Under like circumstances, effect is given in the courts to the determination, of the judicatory bodies established by clubs and civil associations."—280 U. S., at pp. 16-17.

More recently this Court decided in *United States* v. *Ballard*, 322 U. S. 78, that the truthfulness of religious doctrines and practices is not subject to review by either the judge or the jury. This statement was made in a prosecution under the Mail Fraud Statute. In that case the Court said:

> "Heresy trials are foreign to our Constitution . . . The First Amendment does not select any one group or any one type of religion for preferred treatment. It puts them all in that position."—322 U. S., at pp. 86-87.

It is not for this Court or the draft boards to enter the religious field. They may not inquire whether the religious organization and its ministers are conducting themselves according to orthodox standards. The decision by a religious body as to the method of preaching by its ministers and their qualifications is final. This decision, however

strange and unorthodox it may be, is unquestionable by the courts or the draft boards.

The order by a religious missionary organization, to have no laity members but to confine its membership to only its itinerant ministers, is final. It is not subject to any kind of attack by any governmental agency. It is the duty of the courts and the draft boards to recognize and give effect to the decision of the legal governing body of a religious organization. On all religious questions involving a registrant who is a minister of that organization, the decisions are final.

The only question for decision of the draft boards or the courts on judicial review in draft prosecutions is whether or not the minister pursues his ministry as his vocation and not incidental to some full-time secular job. Neither the courts nor the draft boards are authorized to go beyond that question and conduct a heresy trial on the propriety of the religious training, beliefs and practices of the registrant and the religious organization of which he is a minister.

II.

Under the act and the regulations the Government is not permitted to make on assault on the ecclesiastical decisions of any unorthodox and unpopular religious organization and deny rights under the act and regulations to a minister of that group by making an illegal invasion of the religious field reserved to the governing body of the church. It (as it has done) cannot fix tests of heresy. The Government cannot by law seek to compel religious conformity in violation of the above-stated rule of religious immunity and the commands of the First Amendment of the United States Constitution under the guise of enforcing the draft law.

The Government contends that it may turn the internal practices of a religious organization inside out. It says it can compare them with the more orthodox practices of

other churches. This leads to discrimination. The acceptance by this Court of that contention would result in the Court's setting itself up as a religious hierarchy. The Court then would be left without any standard to choose in determining what is right.

There is no one single standard that can be found for orthodoxy among the religions. Among the hundreds of different religious organizations in America there can be found no single norm of conformity. All are different. None conforms to another. The Government and the Court would be taken back into the inquisitions of the Dark Ages. The law would be changed so as to resurrect the ancient and iniquitous practices of test oaths. These were instruments of terror used by the religious inquisition of the Dark Ages.

If the draft boards and the courts were permitted to employ any one of the many different standards of orthodoxy to be found among the popular religions it would result in terror. Discrimination would be rife throughout the land. In a Catholic territory the Protestant minister would be denied exemption. A Protestant community would deny the Catholic priest his rights. Even the most orthodox would be in jeopardy in many communities.

Every time a change in the personnel occurred in a government agency, there would likely be a change in religion of the government agent. If the Government's practice be approved by this Court, then, instead of having government by the act and the regulations, the people will be governed by men and religion. Rights under the act would differ according to the swing of the pendulum, as the religious complexion changed with the appointment to government agencies.

In *Adelaide Company of Jehovah's Witnesses, Inc.* v. *Commonwealth of Australia*, 67 C. L. R. 116 (1943), the High Court of Australia said:

> ". . . it should not be forgotten that such a provision as S. 116 is not required for the protection of the religion of a majority. The religion of the

> majority of the people can look after itself. Section 116 is required to protect the religion (or absence of religion) of minorities, and, in particular, of unpopular minorities. . . . It is not for the court upon some *a priori* basis to disqualify certain beliefs as incapable of being religious in character."—67 C. L. R., at p. 128.

It has been held that if the courts were permitted to inquire into religion, then "we should be entirely at sea, without helm or compass, in this land of unlimited religious toleration." (*Knistern* v. *Lutheran Churches,* 1 Sandf. Ch. 439, 507) Many cases have declared that all religions, Christian or pagan, stand equal before the law. (*Donahoe* v. *Richards,* 38 Me. 379, 409; *State* ex rel. *Freeman* v. *Scheve,* 65 Neb. 853, 879) It has been held that the doctrine of government inquiry into the ecclesiastical practices and appointments of religious organizations is contrary to "the spirit of religious toleration which has always prevailed in this country" and can never get a foothold so long as the government is forbidden to decide what religion is the true religion.—*Harrison* v. *Brophy,* 59 Kans. 1, 5, 51 P. 885.

In Ex parte *Cain,* 39 Ala. 440, the Supreme Court of Alabama had before it the case of a part-time minister who had a full-time secular job. He claimed exemption under the Conscription Act of the Confederacy. The same argument was pressed upon that court that the Government has advanced in this case. The court refused to pass upon the ecclesiastical determination. It said,

> "Neither this court, nor any other authority, judicial or executive, in this government, is a hierarchy, clothed with the power of determining the orthodoxy of any religious sect or denomination. It does not vary the question, in the present case, that Cain belonged to a sect of religionists who performed religious labor gratuitously."—P. 441.

The policy of the Government, being compelled by law to keep its hands out of the internal affairs of religious organizations, is well expressed in a Kentucky case. (*Klix* v. *Polish Roman Catholic St. Stanislaus Parish*, 118 S. W. 1171.) The court said:

> "It would be tyrannical to coerce the different religious communions into the adoption of one rigid type of church government . . . ; and we do not see that the weal of the public in this commonwealth would be threatened by tolerating different kinds of church government any more than it has by tolerating different creeds and devotional rites."—118 S. W., at p. 1176.

The rule is very well stated by the Ontario Court of Appeals. In the case styled *McPherson* v. *McKay*, (1880) 4 O. A. R. 501, Mr. Justice Patterson said:

> "The functions of a Court of law exclude the discussion of the doctrines, government or discipline of voluntary religious associations, except when they become elements in the adjudication of controversies respecting property, contracts or other civil rights."

In this case that is now before the Court there is no internal controversy subject to review. The Court has no lawsuit over property or contract; no civil rights are involved. There is no ground to go inside the organization.

Recently this Court reconfirmed the principle of law here contended for. It was in the case involving one of Jehovah's Witnesses. In *Fowler* v. *Rhode Island*, 348 U. S. 67, the Attorney General of Rhode Island attempted to get this court to decide that the giving of a public discourse in a public park was not religious services. This Court unanimously refused to grant the request of Rhode Island. It said:

"Nor is it in the competence of courts under our constitutional scheme to approve, disapprove, classify, regulate, or in any manner control sermons at religious meetings."—348 U. S., at p. 69-70.

This Court went on to hold in the *Fowler* case that if it did decide ecclesiastical questions by comparing Jehovah's Witnesses with other orthodox denominations, "the hand of the law would be laid on the shoulder of a minister of this unpopular group for performing the same function" as that performed by the more orthodox ministers.—348 U. S., p. 70.

Even in draft prosecutions all religious organizations from the outside look the same to the law. The Court must use the spectacles of the law. It can not put on glasses colored by any religion when it views Jehovah's Witnesses. The argument of the Government closes the door of exemption in the act on religion. By comparing one religion with another it converts governmental agencies into terror tribunals of conscience. Sophistry by the Government in its argument drags a red herring across the path of the law. This the Government uses to sidetrack the Court. It wants to lead the Court into a blind alley of religious inquiry. A multitude of ecclesiastical problems will open up if the Government is followed. These questions are beyond the competence of draft boards and the courts. This is true as a matter of law. It is more true when viewed as a matter of learning. Very few if any secular judges are skilled in ecclesiastical matters as they were in times of old.

In ancient times the clergy were the judges. Now the judges are not the clergy. They lack the competence of the clergy on religious questions. In fact the law makes even the clergy incompetent to judge other ministers under the American system of government. This freedom stops the mouths of all persons.

No minister can question the propriety of another min-

ister's religious practice or belief even though he be registered under the draft act. (*United States* v. *Balogh*, 157 F. 2d 939 (2d Cir.); vacated 329 U. S. 692; reversed on other grounds on rehearing 160 F. 2d 999 (2d Cir.)) All such religious questions are made irrelevant to inquiry under the draft law either before the draft board or the court. —*United States* v. *Balogh, supra.*

It must be remembered that the law laid down by this Court does not apply only to Jehovah's Witnesses. It will be a mandate by the Court to the Selective Service System to be enforced against all denominations. Let the Government, the courts and the draft boards be permitted by law to invade the internal practices of all religions! Ridiculous! Then such officials must make a detailed ecclesiastical inquisition into the practices of all the more than two hundred and fifty denominations in the United States. Any religions, or ministers, who do not come up to some unnamed and undefined ecclesiastical norm, in the view of the officials, will be denied legal protection by the Government inquisitors.

Many other minority and unpopular groups besides Jehovah's Witnesses would be denied their rights. Majority organizations also could be crucified. Why? They do not have any consistency of practice. The Government's argument must be carried to its logical conclusion in order to test its validity. Cannot everyone see the indescribable maelstrom of confusion and evil that will result if the Government is allowed to prevail in this heresy-hunting argument? This sophistry of the Government is subversive of the Constitution that protects internal religious decisions from question.

The Government's effort may well lead the popular religions to an interesting parallel in history. A high government official of Persia was also afflicted with religious intolerance. He prepared a gallows upon which to hang a minister, a Jew. His scheming backfired on him. He was

hanged on his own gallows that he himself built for the minister. The name of this official was Haman. The account of his downfall appears in the Bible, Esther, chapters 5 to 7.

The training of the minister, his appointment or ordination to preach and his preaching are ecclesiastical determinations. They are binding upon the Government. They must be accepted by the draft boards and the courts. The only question left open by the statute and the regulations is whether the minister is pursuing his ministry as his vocation and not incidental to a full-time secular job.

III.

If the act and regulations are construed so as to allow the Government, the draft boards and the courts to invade the ecclesiastical decisions of religious bodies and apply principles of religious conformity in determining who is qualified as a minister, then, as construed and applied, the act and regulations will discriminate and be in conflict with the First Amendment of the United States Constitution prohibiting the establishment of a state religion and forbidding the abridgment of any rights to freedom of religion.

This Court must interpret the statute reasonably. All reasonable doubts must be indulged in. Definitions must be interpreted in favor of the rights of the one indicted under criminal statute. (*Harrison* v. *Vose*, 50 U. S. 372, 378) The sensible construction must be given the act.

Oppressions, absurd consequences and flagrant injustice must be avoided. The Court must presume that Congress intended to avoid any such results. (*United States* v. *Kirby*, 7 Wall. (U. S.) 482, 486, 487; *United States* v. *American Trucking Assn.*, 310 U. S. 534) If a writing is susceptible of two different constructions, "by one of which grave and doubtful constitutional questions arise and by the other

of which such questions are avoided, our duty is to adopt the latter."—*United States* v. *Delaware & Hudson Co.*, 213 U. S. 366, 408.

The argument of the Government that the Court and the draft boards have authority to question the ecclesiastical determinations made by Jehovah's Witnesses on qualifications of its ministers, methods of preaching and places of preaching is unreasonable. If accepted by this Court it will raise a "succession of constitutional doubts as to such interpretation."—*Harriman* v. *Interstate Commerce Comm.*, 211 U. S. 407, 422.

If Congress had intended to permit the draft boards and the Government to invade the exclusive field reserved to the ecclesiastical tribunals of the various religious organizations it would have said so expressly. Congress would not have done it "by artifice" in preference to plain terms. It is beyond the judicial power to do a farfetched thing like this by construction.

> "We think we should not try to reach the same result by a series of interpretations so far-fetched and forced as to bring into question the candor of Congress as well as the integrity of the interpretative process."—*Western Union Tel. Co.* v. *Lenroot*, 323 U. S. 490, at p. 508.

It is respectfully submitted, therefore, that if the Government's position (and that of the court below) is accepted here, the exclusive domain of the ecclesiastical authority of religious organizations will be illegally invaded. Invasion of this field is foreign to the First Amendment. A construction of the statute and regulations is necessary so as to avoid any such unreasonable or unconstitutional consequences.

Three

The uncontradicted and unimpeached documentary evidence in the draft board file showed that petitioner pursued his ministry as his vocation. The denial of the ministerial exemption, therefore, is arbitrary, capricious and without basis in fact.

I.

The facts showed that petitioner was a full-time minister, known as a "pioneer." He preached in his missionary field as his vocation.

Jehovah's Witnesses, the group to which Dickinson was attached, have always been a recognized religious organization, under the Selective Service Act and the regulations.

Dickinson was first classified July 30, 1950. At that time he had quit full-time secular work. This was on August 1, 1949. He was engaged in the ministry of religion as his vocation for over 11 months before classification by his local board. He was then devoting more than 100 hours per month to actual preaching in his missionary field.

The local board heard Dickinson personally on September 7, 1950. At such personal appearance he testified orally. He also submitted documentary evidence supporting his claim for exemption.

In his questionnaire he showed that he had been a minister of Jehovah's Witnesses since July 1, 1947. But he said in the form that he was not formally ordained. Later, however, upon his oral hearing he told the board that he had become officially ordained in April, 1949. After that date he was a fully ordained minister of religion.

The memorandum made by the board upon personal appearance (oral hearing) showed that Dickinson had "not been ordained." [36] Dickinson explained that this memorandum of his oral evidence was not correct. [79] This error of the board in summarizing the case was probably

based upon the statement appearing in the questionnaire filed almost two years before the hearing. The form was filed before his formal ordination. The memorandum of the hearing did not show the explanation that Dickinson made at the hearing about his ordination in April of 1949. [79]

Upon the personal appearance and hearing he offered to the draft board documents received from the Watchtower Bible and Tract Society, the legal governing body of Jehovah's Witnesses, certifying that he had been duly recognized and appointed as a full-time pioneer minister. [66-67, 138]

He showed that he was the presiding minister of the Coalinga, California, Congregation of Jehovah's Witnesses. He supervised the missionary work of others of Jehovah's Witnesses, as such presiding minister. In addition to his 100 hours per month devoted to field missionary work, he showed he spent 50 hours per month studying in preparation for sermons and his missionary work. Included in this was time spent preaching from the pulpit.

He put in five hours per week doing incidental secular work. He repaired radios on the side. His average earnings from radio repair work are $35 per month. Through frugal living and help from others interested in his missionary work, he was able to support himself financially.

All the above evidence showed that he was pursuing his ministry as his vocation. The board in its memorandum of September 7, 1950, found that Dickinson devoted "his full time to the work of preaching." [36] The board said that he "supports himself through this work. Jehovah's Witness." [36]

The evidence in the file undeniably showed that Dickinson was devoting at least 150 hours a month to performance of his duties as a minister of religion. This uncontradicted evidence was corroborated by the finding of the local board that he devoted his full time to this work. The evidence and the finding of the local board are not and can not be con-

tradicted. They show that he pursued the full-time ministry as his vocation.

The records of the draft board, therefore, do not require the Court to weigh the evidence. This the Court cannot do. Weighing of the evidence becomes necessary when—and only when—there is a dispute in the file. Since there is no conflict in the evidence and the local board found, as a fact, that he devoted his full time to the ministry, the question before the draft boards was a question of law. The boards had only to apply the law. The local board and the boards of appeal were not authorized to deny a claim established by the uncontradicted evidence. This Court said in *Dismuke* v. *United States*, 297 U. S. 167:

> "This does not authorize denial of a claim if the undisputed facts establish its validity as a matter of law, or preclude the courts from ascertaining whether the conceded facts do so establish it." —297 U. S., at pages 172-173.

Decisions holding pioneer ministers of Jehovah's Witnesses to be exempt were handed down by judges of the district courts under the 1940 Act. These decisions were: *Arpaia* v. *Alexander*, 68 F. Supp. 820 (D. C. Conn.); *Flakowicz* v. *Alexander*, 69 F. Supp. 181 (D. C. Conn.). In each of these cases the status of the man was that of a full-time minister of Jehovah's Witnesses. They occupied the same status with the organization as does Dickinson. The facts there match the facts here.

In *United States* v. *Graham*, 109 F. Supp. 377 (W. D. Ky.), a similar determination was made. That case involved the denial of the minister's exemption, or the IV-D classification, by the National Selective Service appeal board. The evidence showed that Graham devoted almost 20 hours per week to part-time secular work, and over 100 hours a month to his ministry work. It showed that he was a full-time pioneer of Jehovah's Witnesses. The court said:

> "Nothing appearing to contradict or impeach

the verity of his claim as a conscientious objector and as a minister, it is adjudged by this Court that the classification of the defendant in I-A is without any factual foundation."—*United States* v. *Grahan*, 109 F. Supp. 377 (W. D. Ky.).

A similar holding was made in *United States* v. *Burnett*, United States District Court, Western District of Missouri, September 1, 1953.

Recently the United States Court of Appeals for the Tenth Circuit held that where the evidence in the draft board file, filed by the claimant, was undisputed, there was no question presented of weighing the evidence. The court held that the evidence was undisputed, and established the claim as a conscientious objector as a matter of law. (*Annett* v. *United States*, 205 F. 2d 689, June 26, 1953) Application for certiorari is being made by the Government in that case.

Under the 1940 Act, the United States Court of Appeals for the Seventh Circuit held that one of Jehovah's Witnesses had been illegally denied the ministerial exemption. The Court concluded that the denial of the IV-D classification was without basis in fact.—*Hull* v. *Stalter*, 151 F. 2d 633.

In that case Hull was engaged in full-time secular work and part-time ministry at the time of his registration. Later and before his final classification he notified the local board of his intention to quit secular work and go into the full-time pioneer ministry work of Jehovah's Witnesses. He did. While his case was pending and before his final classification by the appeal board the change was made known.

The court of appeals held that the late changing from the part-time ministry to the full-time ministry was no basis for denying the claim. It held that the duty of the board was to classify Hull according to his status at the time of the final classification and not at the time of his registration and first classification. The court concluded that the undisputed evidence showed that he was a minister of

religion exempt under the act. That decision is directly in point in this case.

Congress did not intend to confer upon the draft boards arbitrary and capricious powers in the exercise of their discretion. They have discretion to follow the law when the facts are undisputed. If there is a dispute, the boards have the jurisdiction to weigh the testimony. It is then and then only that their decisions are final and binding on the courts. Where there is a denial of the ministerial status and there is no dispute in the evidence (the documentary evidence otherwise establishing that the registrant is a minister) it is the duty of the court to pierce through the shell and hold that there is no basis in fact. It must conclude that there is an abuse of discretion and that the classification is arbitrary and capricious regardless of the board's finding.

Such is the case here. The undisputed evidence shows that Dickinson pursued his vocation as a minister. This entitled him to Class IV-D. The denial of the exemption is without basis in fact. The I-A classification flies into the teeth of the evidence, is arbitrary and capricious. Such classification is a dishonest one, making it unlawful.—*Johnson* v. *United States*, 126 F. 2d 242, 247 (8th Cir.).

The case of *Estep* v. *United States*, 327 U. S. 114, held that if there was no basis in fact for the classification the action of the board was in excess of its jurisdiction. This Court said that judges may not question an erroneous decision if the evidence must be weighed.—327 U. S., p. 121.

There must be contradiction in the evidence or an impeachment of the registrant before there is a question of weighing the evidence. A board is the judge of a registrant's credibility. If it fails to appear in the file that the board questioned a registrant's truthfulness, it must be assumed that the claims were judged on the basis of accepting the facts stated by him as true. We do not have here a case where the board denied the truthfulness of the testimony of the registrant.

The question for decision is only whether the undisputed

evidence establishes no basis in fact for the classification. Better stated: Is there no basis in fact for the denial of the claim for the exempt ministerial classification?

The Selective Service Act of 1948 and the later Universal Military Training and Service Act (1951) are to be construed more liberally to the registrant than was the 1940 Act. The reason for this rule is to protect the registrant. It is well stated in Ex parte *Fabiani*, 105 F. Supp. 139 (E. D. Pa.).

It is not here contended that the Court should scrap the no-basis-in-fact rule stated in *Estep* v. *United States*, 327 U. S. 114. It does seem, however, that in applying the no-basis-in-fact rule under the 1948 Act the Court should be as liberal as possible to registrants. Reasons for this are stated in Ex parte *Fabiani*, 105 F. Supp. 139, at pages 145-147. The rule of liberal interpretation should authorize the Court to hold that, if there is no contradicting or impeaching evidence that compels a weighing of the evidence, it must be concluded that there is no basis in fact for the classification or the denial of the claim for exemption as a minister.

The facts in this case are brought squarely within the rule announced by the court in *Hull* v. *Stalter*, 151 F. 2d 633 (7th Cir.). In that case the registrant was a full-time pioneer minister for the Watchtower Bible and Tract Society. That is the same status as the petitioner has in this case. The rule applied in the *Hull* case ought to apply here. The language of the court is appropriate. That case involved an arbitrary classification of one of Jehovah's Witnesses. The court said:

> "Much is said in the briefs both complimentary and derogatory to Jehovah's Witnesses. With this argument we are not concerned. Whatever a draft board or a court, or anybody else for that matter, may think of them is of little consequence. The fact is, they have been recognized by the Selective Service System as a religious organization and are entitled to the same treatment as the members

of any other religious organization. We do not agree with relator's argument that all members of the organization are ministers and exempt from military service. Neither do we agree with the Government's argument that the activities and doings of all the members of the organization may be taken into consideration in determining whether a particular member is entitled to exemption. . . .

"A study of this record leaves no room for doubt but that relator, at the time of his final classification and for many months prior thereto, was a full-time minister within the meaning of the regulation and this pronouncement of the Selective Service System.

". . . We have serious doubt that there was any justification for the Board's refusal originally to classify relator in 4-D. Whatever be thought, however, of the Board's original action in this respect, there can be no question but that subsequent proof conclusively demonstrated that he was entitled to such classification.

"Such being the situation, the Board abused its discretion in its refusal to so classify him. Its action was arbitrary and unauthorized."—151 F. 2d, at pp. 637-639.

Cox v. *United States*, 157 F. 2d 787 (decided by the court below), affirmed 332 U. S. 442, rehearing denied 333 U. S. 830, and *Martin* v. *United States*, 190 F. 2d 775 (4th Cir.), do not apply here. The reason is that in both of those cases the registrants had secular vocations. They devoted a large and substantial part of their time to performance of secular work at the time of final classification. In this case the evidence shows that Dickinson relinquished his full-time secular job many months before his first classification.

The minor, incidental five hours per week devoted to

secular work did not in any way prevent him from full and complete performance of his ministerial duties as his vocation. It did not interfere with his vocation. The evidence showed without dispute that he pursued the ministerial work as his vocation. It did not show that he performed the ministry incidentally to secular work as did the registrants in the *Cox* and *Martin* cases.

Cox v. *United States*, 332 U. S. 442, has an erroneous holding in it:

> "As he made claim of conscientious objector classification only after he was reclassified I-A from IV-F and still later claimed ministerial exemption, the board was justified in deciding from the available facts that Cox had not established his ministerial status."—332 U. S., at page 451.

To begin with, the holding made by the Court in the above quotation was contrary to the regulations in existence at that time. The 1940 Act and the regulations commanded a change in classification with a change of status from the time of registration to the time of final classification. The holding in *Hull* v. *Stalter*, 151 F. 2d 633 (7th Cir.), demonstrates completely the error of the holding in the *Cox* case by this Court. In that case the court said:

> "Moreover, we also have read the regulations and are of the view that this purported concession on the part of the Government was correct. We see no reason why a registrant with a nonexempt status at the time of registration should not subsequently be permitted to show that his status has changed or, conversely, why one who is exempt at the time of registration should not afterwards be shown to be nonexempt. In fact, the latter situation seems to be contemplated by § 5 (h) of the Act, which provides that 'no . . . exemption or deferment . . . shall continue after the cause therefor ceases to exist'. The point perhaps is

better illustrated by referring to certain officials who are deferred from military service while holding office. Suppose a registrant who held no office at the time of his registration and was therefore liable for military service should subsequently be elected or appointed judge of a court or any other office mentioned in the Act. We suppose it would not be seriously contended but that he would be permitted to show his changed status any time prior to his induction into service and therefore be entitled to deferment. And we see no reason why a registrant claiming to be exempt as a minister should not be classified according to his status at the time of his final classification rather than that at the time of registration."—P. 635.

The action taken in one case by the Attorney General is significant. In that case the registrant was a part-time minister at the time of first classification. When he had his personal appearance he was a full-time minister. That was in *Smith* v. *United States*, 327 U. S. 114. Following the reversal of the conviction in that case (327 U. S. 114) the Government again prosecuted. A conviction was obtained. The case was appealed again to the Court of Appeals for the Fourth Circuit. The case was again reversed and remanded for a new trial because of procedural errors. —*Smith* v. *United States*, 157 F. 2d 176 (4th Cir.).

On a remand of the case the Attorney General of the United States directed the United States Attorney to *nolle prosequi*. The order of the Attorney General was based on a letter from General Hershey, National Director, to Tom Clark, Attorney General. He requested a dismissal of the prosecution because it was his opinion that Smith was exempt as an ordained minister of religion.

The classification had been denied to Smith because the draft board failed to make a memorandum of the change from part-time ministry to the full-time "pioneer" ministry.

This new evidence of a change was given upon an oral hearing before the board.

The *Cox* case was decided by a divided Court, five to four. No opinion was joined in by a majority of the Court. Mr. Justice Frankfurter merely concurred in the result. He did not agree with the opinion of the four justices with whom he agreed to make a majority and affirm the judgment of conviction.

Even the opinion of the four justices who decided against Cox in that case and in favor of affirmance does not control here. In the *Cox* case these four justices found that the defendants "spent only a small portion of their time in religious activities." Here the facts show that Dickinson devotes many times more time to his ministry than he devotes to part-time secular work. The record also shows that he devotes as much time, if not more, to the performance of his ministry work as do the orthodox clergy.

The opinion of the four justices in favor of affirmance in the *Cox* case was also based on the fact that there was no "definite evidence of his full devotion of his available time to religious leadership" in each case. In this case we have more than appeared in the *Cox* case.

In *Cox* v. *United States*, 332 U. S. 442, there was no showing that the registrants pursued the ministry as their "vocation." The basis of the decision *was not that Jehovah's Witnesses are not ministers.* Nowhere did the majority say that they are not ministers. The majority merely concluded there was no showing that, by reason of the time the petitioners devoted to their ministry, they occupied a position of leadership as Jehovah's Witnesses. They had not dedicated their lives to the furtherance of the religious work of Jehovah's Witnesses. The Court based its decision on a failure to show that the ministry was their full-time job.

In the *Cox* case it was said that the evidence was submitted only by each petitioner. It was emphasized that there was no adequate supporting documentary evidence of their ministerial status. In this case there were filed numerous

supporting affidavits. Also shown to the local board was a certificate issued to Dickinson by the Watchtower Bible and Tract Society, the legal governing body of Jehovah's Witnesses. It certified that he had been engaged as a full-time minister since August 1, 1949.

The evidence submitted to the board by Dickinson was not contradicted, discredited, or impeached by the local board or the Government in the trial court. The court below, however, endeavored to make light of it. [138] The documentary evidence was accepted as true by the local board. The only bases for the denial of the IV-D classification were the arbitrary and capricious grounds shown in the memorandum of personal appearance.

In the *Cox* case there was an issue of fact before the local board. In the case at bar there is no issue of fact. The fact situation is clearly within that involved in *Niznik* v. *United States*, 184 F. 2d 972 (6th Cir.). There is, moreover, no ground for the determination below. The rule stated in *Estep* v. *United States*, 327 U. S. 114, about no jurisdiction because no basis in fact applies.

Attention of the Court is drawn to the opinion of Mr. Justice Douglas, joined in by Mr. Justice Black, in *Cox* v. *United States*, 332 U. S. 442, where it was said:

> "It is not disputed that Jehovah's Witnesses constitute a religious sect or organization. We have, moreover, recognized that its door-to-door evangelism is as much religious activity as 'worship in the churches and preaching from the pulpits'. *Murdock* v. *Commonwealth of Pennsylvania*, 319 U. S. 105, 109. The Selective Service files of these petitioners establish, I think, their status as ministers . . .
>
> "To deny these claimants their statutory exemption is to disregard these facts or to adopt a definition of minister which contracts the classification provided by Congress.
>
> " . . . It is not uncommon for ordained minis-

ters of more orthodox religions to work a full day in secular occupations, especially in rural communities. They are nonetheless ministers. Their status is determined not by the hours devoted to their parish but by their position as teachers of their faith. It should be no different when a religious organization such as Jehovah's Witnesses has part-time ministers. Financial needs may require that they devote a substantial portion of their time to lay occupations."—332 U. S., at pages 456, 457.

Mr. Justice Murphy in the *Cox* case, *supra*, said:

"It is needless to add that, from my point of view, the proof in these cases falls far short of justifying the conviction of the petitioners. There is no suggestion in the record that they were other than bona fide ministers.

"And the mere fact that they spent less than full time in ministerial activities affords no reasonable basis for implying a non-ministerial status. Congress must have intended to exempt from statutory duties those ministers who are forced to labor at secular jobs to earn a living as well as those who preach to more opulent congregations. Any other view would ascribe to Congress an intention to discriminate among religious denominations and ministers on the basis of wealth and necessity for secular work; an intention that I am unwilling to impute. Accordingly, in the absence of more convincing evidence, I cannot agree that the draft board classifications underlying petitioners' convictions are valid."—332 U. S. at pages 458, 459.

The decisions in *Cox* v. *United States*, 332 U. S. 442; *Goff* v. *United States*, 135 F. 2d 610 (4th Cir.); and *Martin*

v. *United States*, 190 F. 2d 775 (4th Cir.), have been made inapplicable by the explicit congressional definition of a minister in Section 16 of the Selective Service Act of 1948.

It is respectfully submitted that there was no basis in fact for the denial of the claim for ministerial exemption. Dickinson should have been classified in IV-D. The I-A classification was arbitrary and capricious.

II.

The performance by petitioner of part-time radio repair work incidental to his vocation of the ministry does not constitute basis in fact for the denial of the exemption as a minister of religion.

The evidence showed that Dickinson devoted about five hours a week to part-time radio repair work. This enabled him to earn $35 per month. Together with help from other sources he was able to financially maintain himself in the ministry. [73, 74, 75, 76]

No extensive argument is needed to show that the performance of work for that amount of time did not make his secular work his vocation. It is also apparent that his vocation continued to be that of an ordained minister engaged in regularly and customarily teaching and preaching the doctrines of Jehovah's Witnesses.

Dickinson, as a pioneer minister of Jehovah's Witnesses, helped support himself by part-time secular work. Yet he actually devoted as much time to preaching and the duties of the ministry as do the orthodox clergymen, some of whom have congregations wealthy enough to support them without performance of secular work. He spent a minimum of one hundred hours monthly in house-to-house missionary work. Much more time he devoted to studying, attending special meetings, preaching before the congregation and performing congregational duties. The orthodox, church-sustained clergy do not spend any more time in their preaching activities. Yet they do not sustain themselves by secular work as does Dickinson.

The court below relied strongly on the fact that when Dickinson filed his questionnaire he was "regularly employed at the navy yard." [141] The court said that the local board knew that, after Dickinson had been classified I-A, "he stated that he had given up his job with the navy and had become a full-time minister of religion." [141] The court then said that this would require a determination by the board on whether such changes of circumstances "were real or feigned merely to improve his chances of proving his claim." [141] The court, in support of this holding, refers to a statement by this Court in the case of *Cox* v. *United States*, 332 U. S. 442, at page 451, about the claim for conscientious objector classification after reclassification of I-A. (See footnote 11 of the opinion of the court below.) [141] This holding in the *Cox* case has been challenged as error, *supra*, at pages 68 to 70.

There is no analogy between the quotation in the *Cox* case and the facts here. To begin with, this is another objection relied on by the court below that was not raised by the local board. The local board found as a fact at the time of the personal appearance that it considered Dickinson to be devoting "his full time to the work of preaching." [124] The chairman of the board at the time made a statement that recognized this change of status. He also made no adverse comment at the hearing. [62-93]

The court below recognized the fact that the board gave no weight to his quitting secular work by quoting in its opinion the finding of the board that Dickinson devoted "his full time to the work of preaching" at the time of the hearing. [124] The court below would erroneously suggest to this Court, however, that the board questioned the veracity of Dickinson. If the local board had given any significance to his quitting "his job with the navy," it would have said something about it in the memorandum or summary made by the board. [124] The court below stated that the summary covered all the facts considered by the board to be

important and material at the personal appearance. [130-131]

The court below keeps on plowing in the wrong field when it asks an insinuative question for the draft board: "If he left the navy, was he still working as a radio repairman, and fully supporting himself thereby?" [141] The draft boards did not ask the question. The answer to this question of the court below is the memorandum prepared by the local board stating that he devoted his "full time to the work of preaching." [124] The board added that he supported himself "through this work." [124] Dickinson testified that he earned $35 a month doing part-time radio repair work for five hours per week. With this amount he paid his bills. [74-75]

The court below could have taken judicial notice of the fact that many poor preachers who work to support themselves are also aided by the congregations that they serve. The apostle Paul said: "The workman is worthy of his wages." (1 Timothy 5:18, *New World Translation*) Members of the congregation frequently give poor preachers meals, donate clothing to them, etc. The needs of the minister are often taken care of by gifts in order to see that he is able to continue in the Lord's work. Jesus indicated that if God can provide for the birds of heaven he can also support his ministers by causing gifts to be made to them. —Mattew 6:25, 26; Luke 12:22-24; Exodus 16:4, 1 Kings 17:6.

Apparently the local board took judicial notice of the congregational practice of supporting ministers through gifts when it said that Dickinson supported "himself through this work." [124] The part-time secular work took care of his necessities. Anything additional required apparently came to him "through this work."

The local board placed no reliance upon his performance of secular work. It is difficult to understand why the court below, as a long afterthought, would attempt to inject this

issue into the case; especially when it was not the basis for the denial of the claim by the local board.

The fact that Dickinson may perform secular work in no way interferes with or prevents his performing his duties as a minister of religion. The source of financial revenue of persons excused by the act from the performance of training and service is wholly irrelevant and immaterial to the exemption and deferment granted by Congress.—See *supra*, pages 37-42.

It is plain that the vocation and calling of Dickinson —like many orthodox clergy who perform incidental secular work—is his ministry, rather than the inconsequential incidental work he performs. This was his status on the occasion of his hearing before the local board. He cannot be denied his ministerial classification because he did not become a full-time minister until August 1, 1949. This was long before the first classification by the board.

It is respectfully submitted that the part-time performance of secular work by Dickinson in no way interfered with his exempt ministerial status under the act. It provided no basis in fact for the denial of exemption as a minister of religion. He should have been classified IV-D. The placing of him in I-A classification was arbitrary and capricious.

III.

That Dickinson occupied another office as a minister in the organization of Jehovah's Witnesses, the presiding minister of the Coalinga, California, Congregation of Jehovah's Witnesses, incidental to his work as a pioneer minister, does not affect his vocation as a full-time pioneer minister of Jehovah's Witnesses.

Dickinson was the presiding minister of the Coalinga Congregation of Jehovah's Witnesses. The congregation is not a congregation of laymen. It is a group of ministers and missionaries. Whether each of these persons is qualified for exemption under the act is immaterial. It still remains that they are not laymen.

Dickinson had two congregations. His first and main congregation was his congregation in the missionary field. There he preached in the homes of the people as a minister. This was quite a sizeable group of people. Together they made up his congregation. His other congregation was that which met together at the Coalinga meeting place for Jehovah's Witnesses. It is called the Kingdom Hall. His duties at the meeting place were duties of a minister. They may be described as synonymous to the duties of a high administrator in the office of some orthodox religious group. It was like that of the bishop who presides over a large area supervising the work of other ministers.

Each one of Jehovah's Witnesses is a minister. This is because he has been ordained and preaches to his own congregation. The congregation of each is found in an assigned missionary field. Whether the Coalinga Congregation of Jehovah's Witnesses is an organized group of evangelists engaged in home missionary work, either part-time or full-time, is immaterial. It does not prevent the duties performed by Dickinson as presiding minister from being those of a minister of religion.

It should be remembered that the case involves the activities and work of Dickinson. The work and activities of other members of his congregation are wholly irrelevant and immaterial. That most congregations of the various religions are composed of laymen is immaterial. The orthodox yardstick of the clergyman in the pulpit, with laymen in the pews, cannot be applied here. They are no measuring rod.

No comparison can be made between a congregation of laymen and a congregation of missionaries. The fact that a group of carpenters get together and elect a chairman to preside over them does not keep the chairman from still being a carpenter. That a group of ministers and missionaries gather in a congress or college, and appoint a presiding

officer, does not prevent the minister thus elected to the special office from being a minister. So it is with Dickinson.

Jehovah's Witnesses are a society of evangelists, missionaries and ministers. It is not unusual to hear of a society of missionaries or a society of ministers. The Jesuits are known as the Society of Jesus. This is a well-known international Catholic society of ordained priests. Before being a member of that organization one must be a Catholic priest. In various other Catholic societies, such as the Catholic Missionary Society, and the orders of monks of different kinds, the members are confined to ministers, priests and lay brothers. The Baptists Home Missionary Society and other missionary societies of the popular orthodox religious groups have membership confined to ordained ministers. No one can become a member of such societies unless he is ordained and engaged in the field missionary work.

In all such societies they do not have the clergy and laity distinction. Such groups, when they assemble, gather as a congress of ministers. The congregation of Jehovah's Witnesses at Coalinga, California, presided over by Dickinson, assemble in the same manner. The fact that they were all ministers and were presided over by Dickinson did not prevent Dickinson from being a minister of the gospel.

The undisputed evidence shows that Dickinson spoke from the pulpit or platform in the congregation. He presided at meetings. This was another part-time job for him. He preached to the congregation. He used the Bible as the source of his guidance of the congregation in public worship. The fact that the audience that he spoke to were ministers instead of laymen did not in any sense of the word change the nature of his work.

The Government contends that because Dickinson presided over a congregation of ministers, and not a group of laymen, that he is not exempt as a minister. It is said by the Government that because the members of his congre-

gation perform the same sort of field missionary work that he did, he was not to be classified as a minister. It takes the position that the office of a presiding minister or congregation servant, as he was called, did not entitle him to be classified as a minister, because of the contentions just stated.

It is agreed that the office of congregation servant or presiding minister *alone* (a part-time job, not full-time) did not entitle Dickinson to be classified as a minister of religion. The reasons relied upon by the Government are, however, not agreed to. These reasons are wrong. Had the duties of the presiding minister required all of his time to the work, then there would be no doubt that he would be entitled to the exemption. His duties were not confined to the performance of the part-time office as presiding minister. He had a full-time job as a pioneer. It was this full-time missionary work that he was performing in the field that entitled him to the classification.

The duties of the presiding minister of the congregation, which he performed, actually buttressed his vocation and claim for exemption based on his full-time missionary work. It supported his ministry. It made the claim stronger. He showed more than the law required for exemption. His job as presiding minister was a performance of another, second, religious office. It was in addition to his work as a pioneer, which was his vocation. By law it made him exempt regardless of his position as presiding minister.

It is respectfully submitted that petitioner is exempt as a minister by reason of his full-time pioneer missionary activity (regardless of performance of duties as presiding minister of the congregation). The part-time presiding-minister work merely augments his claim for exemption as a full-time minister.

IV.

Nothing said in the opinion of the court below about the status of petitioner as a full-time pioneer minister prevents his classification as a minister of religion based alone on that activity.

The act and the regulations, as has been shown, have no orthodox limitations. They provide for a general exemption that protects all full-time ministers of all religious organizations. It was not intended by Congress to limit the exemption to only the minister who acted as the full-time presiding minister of a congregation of laymen meeting in a building. As has been shown, it extends to all who pursue their ministry as their vocation, regardless of the duties they perform in their particular religion.

The courts have construed the law to protect the full-time pioneer missionary of Jehovah's Witnesses, even when he does not act as the presiding minister of a congregation. —*Hull* v. *Stalter*, 151 F. 2d 633 (7th Cir.); *United States* v. *Graham*, 109 F. Supp. 377 (W. D. Ky.); *United States* v. *Burnett*, United States District Court for the Western District of Missouri, September 1, 1953.

Whatever uncertainty existed in the 1940 Act about the amount of time required to be devoted to the ministry (see *Cox* v. *United States*, 322 U. S. 442) was removed when the 1948 Act was passed. The new statute required that before a registrant could successfully claim exemption as a minister of religion he would have to show that he pursued his ministry as his vocation.

The present act when properly interpreted exempts petitioner. The undisputed evidence shows he has pursued the full-time pioneer field missionary work as a minister of religion. It is undeniably his vocation. His position in the organization as a pioneer makes him one of the leaders. He is a leader because the ministry of Jehovah's Witnesses is his vocation.

His position as presiding minister of the congregation makes him a special leader of others of Jehovah's Witnesses.

This alone does not entitle him to the exemption because his duties in that office are not his vocation. He contends that his leadership before and among the congregation located among the homes of the people within the boundary of his missionary territory makes him exempt. It is in these homes that he has a congregation of laymen. They depend upon him for spiritual guidance. He is their leader.

A religious congregation is not necessarily confined to members who meet in a cathedral or in another church edifice. It is true that those who gather in such places are a congregation of religious people. These may not all be members of the church presided over by the minister. A careful study of history of religion heretofore reviewed (*supra* at pages 43-49) shows that a congregation of an itinerent evangelist and peripatetic minister may be—and often is—found either on the streets or in the homes of the people.

Dickinson, according to the testimony and the papers in his draft board file, is this type of a primitive minister. He, like the apostle Paul, 'teaches publicly on the streets,' and also in the homes of the people. (Acts 20:20; Luke 22:24-27) Dickinson in his territory, as did Christ Jesus, went around "about the villages, teaching" and 'preaching the gospel of the kingdom.'—Mark 6:6; Matthew 9:35; Luke 8:1.

Dickinson said that he followed the advice of Peter, which is to preach primitively like Jesus. Peter said: "For even hereunto were ye called: because Christ also suffered for us, leaving us an example, that ye should follow his steps." (1 Peter 2:21) Jesus told all of his primitive followers to go from house to house: "And as ye go, preach, saying, The kingdom of heaven is at hand." (Matthew 10:7, 10-14) James emphasized the duty of a Christian evangelist: " . . . to visit the fatherless and widows in their affliction." (James 1:27) It was done at their homes.

It is in the homes of the people therefore that the main congregation of Dickinson is found. He discharges the re-

sponsibility put upon him by the law of God and the governing body of Jehovah's Witnesses as a Christian evangelist and minister, following in the footsteps of Jesus. He answers the need of thousands of people in his vast missionary field. It is well known that a large percentage of the people do not belong to any church. They therefore never go to church. A large percentage of the people, although they are members of a church, do not attend. The only way that these people can be served with spiritual truths, and kept free from the disintegrating influence of ignorance of the Bible and from communism, is by having the gospel preached to them at their homes. This Dickinson did.

The Government takes the position that the work of the petitioner in his missionary field is not that of a minister. It is contended that he is a mere book peddler. To begin with, this contradicts the undisputed evidence. The facts show that, in addition to distributing books containing religious sermons, he also answers Bible questions. He also conducts home Bible services as a minister in the residences of the people. Furthermore, he administers to their spiritual needs as their minister. He customarily serves regularly each week the same people in the performance of his missionary preaching.

Even if petitioner's activity were confined to the distribution of books in his missionary field, he still would be exempt. The distribution of religious literature in his missionary field may be his major activity. But he also preaches orally in the homes of the people. For the purpose of argument only, let it be conceded that he does nothing but distribute literature as a minister of Jehovah's Witnesses. Still, in accordance with the national policy expressed by the Court and that of the Selective Service System, he would be exempt as a minister.

The ecclesiastical determination of Jehovah's Witnesses is to use literature—written sermons—as a means of preaching the Word, and not confine preaching to oral sermons.

That ecclesiastical determination as a proper method of preaching is binding upon this Court. The Government and the draft boards must concede that it is preaching employed by Jehovah's Witnesses. This preaching through the use of literature is unassailable. It is beyond the competency of the draft boards or the courts to encroach upon the ecclesiastical determinantion made by the governing body of Jehovah's Witnesses. This method must be considered to be religious preaching, the same as preaching from the pulpits. This Court has so held in *Murdock* v. *Pennsylvania*, 319 U. S. 105, 109.

The religious book colporteurs of the Seventh-Day Adventist group have been declared to be exempt under the 1940 Act as ministers of religion. While this group are not ministers in the sacerdotal sense or ordained as are Jehovah's Witnesses, they are ministers of religion within the meaning of the act. A predetermination of their ministerial status was made by General Lewis B. Hershey in his State Director Advice 213-B, June 7, 1944, Selective Service System, Washington, D. C. He said that they are ministers "even though they are not ordained." When each is "found to be actually engaged in a bona fide manner in full-time work of this nature and files evidence of possession of a colporteur's license or a colporteur's credentials," he is entitled to the exemption. The Seventh-Day Adventist colporteurs are mere "Gospel workers." Their qualifications are claimed to be equal in standing, however, with those who preach the gospel.—White, *The Colporteur Evangelist*, Mountain View, California, 1930.

The National Director of Selective Service has declared Jehovah's Witnesses to be entitled to the ministers' classification. In *Selective Service in Wartime* (Second Report of the Director of Selective Service 1941-42), Washington, Government Printing Office, 1943, he said that the ministerial exemption extended to "the Jehovah's Witnesses, who sell their religious books, and thus extend the Word." (P. 241) The National Director said in this same report that

all that is required of the minister of religion claiming the exemption is that he show that he has "dedicated himself to his task to the extent that his time and energies are devoted to it to the substantial exclusion of other activities and interests."—*Selective Service in Wartime*, p. 241.

Dickinson's former background and schooling for the ministry cannot be questioned. This also is armored completely by an ecclesiastical determination of Jehovah's Witnesses that was binding upon the draft board. It is conclusive. It can be questioned neither by the Government nor by the courts.

Congress did not intend that a minister have his background questioned. Senator Tom Connally specifically rejected such efforts when this act was brought before Congress. He said:

> "Mr. President, when I was a boy none of the preachers whom I ever heard preach could have taken the benefit of that exemption. . . . Many good old cornfield preachers who gathered their flocks around an open Bible on Sunday morning or gathered their flocks in camp meeting in the summertime, and got more converts during those two weeks than they got all the year, because next year they would get all those converts over again and then some new ones, never saw a divinity school. They never were in a seminary; but they walked with their God out yonder amidst the forests and plains; they read His book at night by kerosene lamp or tallow candle."—86 Cong. Rec. 10589-10590.

See also *Niznik* v. *United States*, 184 F. 2d 972 (6th Cir.).

Dickinson showed that he had satisfactorily pursued the course of study prescribed by the Watchtower Bible and Tract Society. He completed his training as a minister. The organization found that he was fit and qualified to become (1) a regular minister, and (2) an ordained

minister. This determination was an ecclesiastical determination. It is not subject to review before the draft boards or in the courts.

While it was not required that he go to a theological school or attend a divinity college, he did attend the Watchtower Theocratic Ministry School conducted at his congregation. He showed that he had a knowledge of the Bible. He was apt to teach and preach. He knew sufficient of the doctrines of Jehovah's Witnesses. The ecclesiastical determination as to what schooling qualified him to become a minister of Jehovah's Witnesses is not subject to criticism by the Government, the draft board or the courts.

Petitioner's ordination was attacked by the court below. The court ridiculed Dickinson by saying Jehovah's Witnesses put a special meaning on the term "ordination." This holding of the court below is contrary to fact and law.

This Court has many times determined that the question and the propriety of the ordination of a minister of religion is not for the Government or any agent thereof to question. If it is sufficient to the religious organization, it is satisfactory to the law. The adequacy of petitioner's ordination is binding on the Government. The ecclesiastical determination of Jehovah's Witnesses that baptism is their ceremony or method of ordination cannot in any way be questioned or disputed by the court below or by the Government.

Dickinson described to the local board that the ordination ceremony was that of baptism. He said it was the organizational method of Jehovah's Witnesses to give one so ordained "his commission or ordination—the words are synonymous—to go forth and preach to others and teach the things that He Himself cherishes so much." [63] He stated that he testified at the local board hearing that he was ordained by baptism. [64]

It is apparent from a reading of the record that there was no "special meaning" placed on the word "ordination"

by Dickinson or Jehovah's Witnesses, as stated by the court below.

The court below, however, placed a special meaning on the term without saying what it meant. The court below, without any legal authority, criticized the "ordination" of Dickinson and Jehovah's Witnesses. It gave no basis for the criticism. The court rejected the testimony of Dickinson concerning his ordination. The court then assumed an unreasonable attitude of acting as a religious hierarchy instead of a judicial body, contrary to the rule of this Court making ecclesiastical determinations final.

It was for Jehovah's Witnesses and Dickinson to say what was the method of ordination acceptable and satisfactory to them. The court below had no business to say what it did.

The court below violated the democratic attitude of American courts. That attitude is to let religion run its own business without internal meddling on the part of the Government. The spirit demonstrated by the court below also is contrary to that of the Director of Selective Service. He declared that while ordination in many of the large orthodox denominations is accompanied by elaborate ceremonies, in many other organizations, including the dissentients and unorthodox groups, "it is the simplest of ceremonies or acts without any preliminary serious or prolonged theological training. The determinations of this status by the Selective Service System have been generous in the extreme."—*Selective Service in Wartime* (Second Report of the Director of Selective Service 1941-42), p. 240, Washington, Government Printing Office, 1943.

The submission to the ordination ceremony of public immersion in water branded Dickinson as a duly ordained minister of Jehovah's Witnesses. It marked him as a person who dedicated his life to the service of Jehovah God as a minister. It bound him to preach the gospel of God's kingdom as long as he lives. His ordination carries the acceptance of obligations which it imposes. There is entered into

a complete, unbreakable agreement on the part of the minister thus ordained to follow in the footsteps of Christ Jesus. The one ordained cannot abandon his covenant to preach, for any reason. The covenant requires faithfulness—even to the point of death. An ordained minister of Jehovah God cannot retire or quit preaching without violating his covenant. Turning back from preaching results in his everlasting death. God declares that covenant-breakers "are worthy of death."—Acts 3:23; Romans 1:31, 32.

The ordination of Jehovah's Witnesses emanates from the Most High God "whose name alone is JEHOVAH." (Psalm 83:18; Isaiah 61:1-3) He is the source of all authority. Jehovah is the One who authorizes his witnesses and ordains his ministers. He has fixed the ordination ceremony used by Jehovah's Witnesses. Their ordination is identical to the ordination ceremony Christ Jesus underwent. A very simple ceremony marked the beginning of his ministry. He was merely baptized in the river Jordan. (Matthew 3:13-17) That was it. It is this same simple ordination ceremony everyone of Jehovah's Witnesses goes through. By this he dedicates himself to preach. It is his ordination.

Notwithstanding petitioner's ordination ceremony fitting the pattern made by Jesus, the court below ridiculed it. The court said: "Such an exposition of what constitutes an ordained minister of religion could call for nothing but skepticism." [138] This statement is usurpation of judicial authority. As individuals off the bench the judges are entitled to their own ideas about what is an ordained minister of religion. But when wearing robes of justice they must vanish their orthodox views. Surely Congress did not intend to authorize the court below or the draft boards to amend the law and repeal it as has been done here.

The court below goes on to say that "the board was justified in refusing to accept his claim that he was an 'ordained' minister of religion, as it was made clear to them that appellant did not use that term in its ordinary sense."

[140] The local board erroneously recorded petitioner's evidence. It said that Dickinson had "not been ordained." [79, 124] Dickinson testified he told the board he had been ordained. He explained that this conclusion was reached in the board's memorandum through error of the board in referring back to his questionnaire. In his questionnaire filed in November 1948, he stated that he had not been "formally ordained." [33-34] He was formally ordained after he filed the questionnaire in April of 1949. [62-63] His ordination, after filing the questionnaire and before the personal appearance, was fully explained by him to the local board on his oral hearing. [57, 63, 79] Yet, in spite of this undisputed testimony, the local board (as the court below) reached the conclusion that he was not ordained. [79, 124]

Either the local board made a plain mistake of fact by forgetting that Dickinson told them he was ordained or it completely disregarded his oral evidence of a change of his status. It made a determination based alone on what had been stated in the questionnaire. This type of a draft board determination was held to be an arbitrary and capricious one in *Hull* v. *Stalter*, 151 F. 2d 633 (7th Cir.), at page 635.

The courts cannot question the formal ordination of Jehovah's Witnesses through the use of the ceremony of water baptism. Yet even if the courts were to make a fair review of the history of the Christian church it would show that this was the ordination ceremony of all ministers of the early church. It has been shown that this was the ordination ceremony of the Lord Jesus and his apostles.—See page 88, *supra*.

Secular references will establish that this same ordination ceremony was pursued by the Christian church following the death of the Lord Jesus and the apostles.—See pages 53-60 of APPENDIX for full proof.

Doctor Charles Hase, celebrated German historian, in

his book *History of the Christian Church*, pp. 40, 41, New York, Appleton and Co., 1855, says of the early church:

> "Everyone who had the power and the inclination to speak in public was allowed to do so with freedom. Baptism as an initiatory rite was performed simply in the name of Jesus."

The same ordination ceremony or baptism as the sole rite preparatory to the ministry or preceding was declared by the great theologian, Martin Luther. In the book, *The Age of the Reformation*, by Professor P. Smith, page 71, London, Cape, 1920, it is stated:

> "Luther demolishes these walls with words of vast import. First, he denies any distinction between the spiritual and temporal estates. Every baptized Christian, he asserts, is a priest, and in this saying he struck a mortal blow at the great hierarchy of privilege and theocratic tyranny built up by the Middle Ages."

These historical references and others appearing in the APPENDIX (pp. 53-60) clearly demonstrate that the basic ceremony of ordination for the true Christian minister is that now used by Jehovah's Witnesses. It is that of baptism alone. Jehovah's Witnesses therefore are not—contrary to the court below—importing new meaning to the word "ordination." The court below failed to see that Jehovah's Witnesses are actually getting back to the basic principles of the early Christian church in the matter of ordination. Their ordination ceremony is unadorned by the additions made by ecclesiasticism of modern times. It is ancient. It is not novel or special.

The assault by the court below against the ordination of Dickinson defies the fundamental principle of this Court of finality of ecclesiastical determinations. It also contradicts history of religion and the general law of the land. This is expressed in many decisions saying what constitutes an ordained minister. It has been held that the law

"has no regard to any particular form of administering the rite or any special form of ceremony."

> "It has been the practice of this court, therefore, to grant the license to authorize the solemnization of marriages to duly commissioned officers in the Salvation Army who are engaged under such authority in ministering in religious affairs; to all Protestant ministers, Catholic priests, Jewish rabbis, teachers and ministers of spiritualistic philosophy, and in fact all persons who can prove to the satisfaction of the court that they have been duly appointed or recognized in the manner required by the regulations of their respective denominations, and are devoting themselves generally to the work of officiating and ministering in the religious interest and affairs of such societies or bodies."—In re *Reinhart*, 9 Ohio, Dec. 441, 445.

The British courts have also given the same broad and liberal interpretation to the term "ordained minister." In a case involving the ministry exemption under the draft law of Canada Mr. Justice McLean of the Supreme Court of Saskatchewan in the case of *Allen* v. *Cooke*, 1 W. W. R. (1944) 237, said:

> "Although the whole congregation is very indefinite considered from a secular point of view and they appear to be without any prescribed procedure in the matter of ordaining the minister, yet various denominations use various forms of ordination and if the procedure is satisfactory to the congregation, as appears to be in this instance, that should be considered sufficient form of ordination."

The court below makes another attack on the ordination of Dickinson by saying that he relied on weaker evidence

when he could have furnished stronger and more satisfactory proof. The court said:

> "It must have seemed strange to the local board that the only documentary evidence of appellant's capacity as a minister which he brought forward was the affidavit of C. David Easter who described himself as a duly ordained minister working in a certain section of San Francisco." [138]

To begin with, the local board at no time questioned the authenticity of the documentary evidence submitted. The local board did not call for stronger proof of ordination. There was no contention made at any time about inadequacy of the documents submitted until the court below spoke. It pulled the rabbit out of the hat by saying that it "must have seemed strange to the local board." The local board did not say that it seemed strange.

Stronger evidence was offered the board. It was inspected and found to be sufficient. When Dickinson was before the local board he handed up a letter from the Watchtower Bible and Tract Society, the legal governing body of Jehovah's Witnesses, stating that he was a full-time ordained pioneer minister and explaining his duties. [66] (Defendant's Exhibit C for Identification) He also showed the board a letter from the legal governing body assigning him to act as supervising minister and overseer for the Coalinga Congregation of Jehovah's Witnesses. [66-67] —See Defendant's Exhibit D for Identification.

At the personal appearance these documents were shown to the board. The chairman read the letters and Dickinson also explained the contents of them. [67-68] He offered the documents for inspection only because he "had no copies." [68] The chairman read very carefully the letters from the Society appointing Dickinson as the presiding minister of the Coalinga Congregation. [68-69] Dickinson testified that the chairman "seemed to acknowledge that as the fact"

and it appeared that "he was satisfied." [69] Dickinson said that there was no objection to the weight of the letters and no contest of their truthfulness by the board. [69] The exhibits were excluded from the record when offered into evidence. [69-70] This was error.

The court below described these two exhibits in footnote 8 of the opinion. It then proceeded to do what the draft board did not do. The court for the first time questioned the authenticity of the letters excluded by the trial court. [138-139] The court then put words into the mouth of the draft board, contrary to the evidence. It said that an "interesting inquiry for the board was why did not this governing body come forward with a credible certificate as to appellant's standing as a minister?" [138-139] Since the draft board was satisfied with the evidence submitted to it, what right did the court below have to say that this was not satisfactory to the draft board? The mouth of the court below on this point is properly shut!

The court below rambles on. Next it makes reference to the fact that there was a list of ministers of Jehovah's Witnesses filed with the National Headquarters of Selective Service System under the 1940 Act. The list died with the 1940 Act. Reference to the defunct list by the court below was a flagrant mistake of law and fact. Reliance upon the absence of Dickinson's name from the nonexistent list by the court below is arbitrary and capricious. Even under the 1940 Act (when the certified list was referred to in another case by the Seventh Circuit) the ground relied on by the court below was rejected.

In *Hull* v. *Stalter*, 151 F. 2d 633 (7th Cir.), the court said:

> "The fact that his name was not included as a minister of Jehovah's Witnesses at National Headquarters of the Selective Service is of little or no consequence under the facts of the case. While it perhaps was a circumstance to be considered by the Board, it constituted no proof as

to relator's actual status. Furthermore, the practice of placing names upon this list was discontinued by the National Director of Selective Service on November 2, 1942 (relator was finally classified February 3, 1943)."—151 F. 2d, at p. 638.

The certified list of Jehovah's Witnesses referred to by the court below and its opinion is no part of the 1948 Act. There is at present no list of ministers on file with National Headquarters of Selective Service. The list is entirely defunct. While not used in later years under the 1940 Act it went out with the expiration of that act. It is never referred to by the National Headquarters of the Selective Service under the 1948 Act. It is not now used by any part of the system under the 1948 Act.—See APPENDIX, p. 19.

It is never referred to by either the local boards or the appeal boards or by the National Selective Service Appeal Board. The abandoned list is therefore wholly irrelevant and immaterial to issues involved here. At the time the list was promulgated and at the time General Hershey closed the list on November 2, 1942, the petitioner was only 12 years of age. Since the 1940 Act went out of existence before he was required to register, it was impossible to have his name added to the list. Even had he been registered under the 1940 Act, after 1942 he could not have been added to the list. The absence of Dickinson's name from the certified official list under the 1940 Act is as unimportant as the absence of his name from *Who's Who in America*.

The statement made by the court below ("we cannot assume that if this applicant was what he claimed to be he could not secure from the appropriate head or heads of his sect or organization similar evidence of his standing" [138]), therefore, is meaningless. The "similar evidence" referred to by the court was the defunct and abandoned list.

How could the court require that his name appear on a list when the draft board did not insist on this impossibility? If the draft board was dissatisfied with the documentary proof submitted, it would have said something about

it. The uncontradicted evidence, however, is that there was no objection raised by the draft board about the nature of the documentary proof submitted. The board approved the form of the document submitted. The draft board did not question the authenticity of the document submitted. It was beyond the competency of the court to do so.

The proof given by Dickinson to the board showed that he was "recognized by such church, sect, or organization as a regular minister."

The court below confused the two sections of the act in order to sustain its objection to the documents offered by Dickinson. One section of the act relates to ordained ministers. The other is about regular ministers. In footnote 10, Section 16(g)(2) is quoted. This section refers to the definition of a "regular minister of religion." [139-140]

The court below in footnote 7 [137] refers to the definition of the term "duly ordained minister of religion." This definition does not have in it the term "who is recognized" by his organization. Why the court below would seize upon this phrase of the definition of a regular minister and use it to back up its challenge to the documents submitted by Dickinson to the board is very difficult to understand. The court did not explain why it resorted to this mixing practice.

The statement in the opinion of the court below that the board was justified in being dissatisfied with the character of the showing which Dickinson undertook to make [139-140] is entirely without justification. The shortest answer is that the board was not dissatisfied with the character of proof made. It has no place in this case and ought not to be relied on by this Court.

Another ground relied on by the court below is arbitrary and capricious. It is that the local board had the right to "look at the registrant and to observe his manner, his appearance, and his demeanor." [140] The court then says that appearing before the board was a man who at the age of 19 said he was a full-time ordained minister of religion.

Then the court says: "We cannot say that his looks and manner were not such as to emphasize this immaturity and the suggestion of absurdity in this claim." [140]

Why the court below conjures up this basis for objection on the part of the board is more than one can understand. Even the draft board itself did not make any point about the youthfulness of Dickinson. (See the memorandum of the hearing.) [36, 79, 124] When Dickinson was before the local board no question was raised as to his youthfulness. [57-73] Apparently the local board on this point used common sense. The court below missed this and stumbled into the pit of error. The board must have known that if a man is old enough to be a soldier he is old enough to be a minister.

The holding of the court below that a draft board can reject the claim of a minister because of his youthfulness is arbitrary and capricious. It cuts the ground out from under history itself. It nullifies completely the intent of Congress. Surely if Congress intended to disqualify young ministers or to place an age limit on ministers of religion it would have said so. If the President desired to make youthfulness an element of disqualification he could have very easily done so in the regulations. Since neither the act nor the regulations provide for the forfeiture of the exemption because of youthfulness, it is beyond the authority of the courts to so amend the act and regulations. The judges cannot read into the act this alien doctrine.

If youthfulness were an element, Congress would have made no provision for the ministerial exemption. The age limit of the draft law is from 18 to 26. If a young man under 21 or not over 26 is not qualified to be a minister, then Congress did not know what it was doing. It provided for the ministerial exemption of men as young as 18 and not older than 26. The very fact that there is duty imposed on a man between 18 and 26 under the act carries with it the correlative right of an exemption to a man between 18 and 26. It is ridiculous for the court below to base its decision on

this tenuous ground. If young ministers are not exempt then where will religion be when the old ministers die? The holding of the court below is against the public welfare and the history of religion. It is exacerbated when the local board never raised this issue.

Preaching at an early age is not unusual to followers of Christ. (Deuteronomy 6:4-7; Ephesians 6:1-4; Ecclesiastes 12:1; Psalm 71:17; Genesis 18:19) The ministry is not confined to adult persons or to the aged. Youths not only are permitted to preach, but are invited to do so. (Joel 2:28, 29; Psalm 148:12, 13) Ancient outstanding examples are Samuel, Jeremiah and Timothy, whose faithfulness as Jehovah's Witnesses in early youth is proof that it is proper for young men to act as ministers. (1 Samuel 1:24; 2:11; 3:1; Jeremiah 1:4-7) Paul the apostle declares that he sent Timothy forth as a minister. (1 Corinthians 4:17) Timothy was instructed by Paul to let none despise his youthfulness.—1 Timothy 4:12.

Christ Jesus, when but twelve years of age, was already about his "Father's business," discussing the Scriptures. (Luke 2:46-49) When preaching the gospel later on, he said: "Suffer little children to come unto me, and forbid them not: for of such is the kingdom of God."—Luke 18:16; see also Matthew 10:1-6; Psalm 148:12, 13; Proverbs 8:32.

History concerning the popes, archbishops and bishops of the Catholic Church and the clergymen of the orthodox Protestant denominations reflects that many ministers began their ministry at the age of 12 and upward.

John Calvin, the sixteenth century reformer and head and founder of the Calvinistic school of theology, was a chaplain at the age of 12 years. He was at that time a priest in the Roman Catholic Church. Calvin was born in 1509. Concerning him the *Encyclopædia Britannica*, Vol. 4, edition of 1892, says:

> "In his thirteenth year his father, whose circumstances were not affluent, procured for him from the bishop the office of chaplain in the Cha-

pelle de Notre Dame de la Gesine. A few days after his appointment he received the tonsure and on the 29th of May 1521, he was installed in his office."

Centuries earlier, Benedict IX was installed as pope at the age of 12 and continued in office from 1033 to 1056.

Recently *Life* magazine carried an article entitled "A 17-Year-Old Minister." It appears in the March 9, 1953, issue. The article reads:

"Lasserre Bradley, Jr., who had always felt that he had a calling to be a minister, preached his first sermon at the age of 13 in a small Baptist church near his home in Lexington, Ky. The congregation was amazed and delighted by the sermon, which was entitled 'Prepare to Meet Thy God.' At 15 Lasserre organized a congregation in a backwoods community in Kentucky, and the next year his congregation asked Lasserre's home church to ordain their young leader. He was brought before a panel of some 20 ministers who, knowing that their action might be held up to ridicule, made their questions harder than usual. Lasserre had never studied theology formally but he answered questions about the Bible and Baptist doctrine without a flaw and was promptly ordained.

"Today, the Rev. Mr. Bradley, only 17 and still in high school, is pastor of the large New Testament Baptist church in Cincinnati. He drives there each week end to preach, baptize and conduct funerals and weddings. On Friday afternoons, after finishing school, Lasserre jumps into a car given him by an auto dealer and drives 97 miles to Cincinnati. Over the week end he eats and sleeps in the homes of members of his congregation, getting up early Monday to be back home in

time for school. His congregation, an independent Baptist group, was hesitant at first about taking on so young a minister. But under his leadership membership has jumped from 480 to 530, and the congregation, which used to rent quarters, has completed negotiations for buying an old theater for $110,000 to be its church. Lasserre, who graduates from high school in June, plans to continue as pastor while going to college."—Pp. 119-122.

The lower court's approach to whether there was basis in fact is totally unrealistic. It fails to take into consideration the real effect of the law. It accuses the registrant of jumping into the ministry in bad faith with a view to defeating his duty of service. Let us consider a moment: Does the draft exemption have this effect? Could an insincere person start being a minister and then do something else the moment his draft exemption was obtained? Such is not the result of obtaining a IV-D status. One who tried it for such an ulterior purpose would be very disappointed. He would have climbed from the grill into the burning coals. A IV-D status allows a man exemption only as long as he continues in the ministry for which he has been exempted. If he stops doing it, he can be reclassified any time.

Let us be practical. A man does not finish high school much before eighteen. He is then considered old enough to be a soldier. He is also old enough to enter a theology school and to be exempt. He is also old enough to be a lay brother in a Catholic institution and be exempt. Can the Government go around to all theology schools, monasteries and such places and proceed to draft everyone in them on the ground of suspected insincerity? To do so would be to repeal the law whereby Congress exempted them. These men are all at the threshold of life. They are not old enough to do anything much before they come up for draft classification. Practically every young man starting to theology school is in the draft age.

If being of draft age at the time one enters an exempt status defeats his claim for exemption, then the Selective Service System and the courts have found a theory that enables them to laugh at the statute enacted by Congress. Congress made this provision knowing the age of the men being called. It is the duty of the courts to enforce the law. Courts are triers of fact, not of motives or suspicions. Draft boards also must operate on facts of the exempt status, not imagined or suspected reasons for the man's being in it. If he is insincere his course of action during the succeeding years of his liability will speak for itself without the Government agencies having to deny meritorious claims because of suspicion. The court below has based itself on a purely irrelevant and illegal argument quite outside its competence.

Since this point of incompetency of a youth to be a minister was grafted onto the case by the court below because of the personal appearance Dickinson made before the local board it is important to call to the Court's attention how immaterial it is.

The decision of the local board is completely obliterated by the decision of the National Selective Service Appeal Board. It is only the classification by the national board that remains to be challenged. It was entirely immaterial for the court below to refer to the power of observation of Dickinson's youth on personal appearance. The local board took no objection to his so-called youthful appearance and immature demeanor. The court below—without seeing Dickinson—was the first to augur this into the case when it read between the lines. Inasmuch as the National Appeal Board considered only the record and could not observe Dickinson's "appearance, and his demeanor" [140], this particular ground stated by the court below as basis in fact for the denial of the exemption is itself without basis in fact. It should be rejected for that reason.

The court below strongly relied on the fact that when Dickinson filed his questionnaire he was "regularly em-

ployed at the navy yard." [141] It said that the local board knew that, after Dickinson had been classified I-A, "he stated that he had given up his job with the navy and had become a full-time minister of religion." [141] The court then said that this would require a determination by the board on whether such "changes of circumstances . . . were real or feigned merely to improve his chances of proving his claim." [141]

To begin with, this is another objection relied on by the court below which apparently was not raised by the local board. The local board found as a fact at the time of the personal appearance that it considered Dickinson to be devoting "his full time to the work of preaching." [124] The chairman of the board at the time made a statement that he recognized this change of status and he made no adverse comment about it at the hearing. [62-93]

The court below must have recognized the fact that the board gave no weight to his quitting secular work by quoting in its opinion the finding of the board that Dickinson devoted "his full time to the work of preaching" at the time of the hearing. [124] If the local board had given any significance to his quitting "his job with the navy," it would have said something about it in the memorandum or summary made by the board. [124] The court below stated that the summary covered all the facts considered by the board to be important and material at the personal appearance. [130-131]

The court below, in support of this holding, refers to a statement by this Court in the case of *Cox* v. *United States*, 332 U. S. 442, at page 451, about the claim for conscientious objector classification after reclassification of I-A. See footnote 11 of the opinion of the court below. [141] There is no analogy between the quotation in the *Cox* case and the facts here. That holding in the *Cox* case, if relied on here, is challenged as erroneous.—See *Supra*, pp. 68-70.

The holding of the court below on this phase of the case conflicts directly with the holding in *Hull* v. *Stalter*, 151 F.

2d 633 (7th Cir.). There the Government made the same contention raised by the court below. It argued that the draft board could classify a man according to his status at the time of filing his questionnaire rather than at the time of final classification. The Government assailed a statement in the opinion of the trial court as being erroneous. The court of appeals held that the status was to be determined according to the date of classification and not according to the date of filing the questionnaire.—151 F. 2d, p. 635.

It is respectfully submitted that the undisputed evidence showed that petitioner—(1) was a representative of a duly recognized bona fide religious organization, (2) preached the doctrines of Jehovah's Witnesses as an ordained minister, (3) devoted his full time to preaching, which excluded full-time secular work, and (4) had the ministry *as his vocation*. Since the record showed that his proof was not disputed, he should have been classified as a minister of religion and exempted from training and service. Denial of exemption was arbitrary and capricious. The classification was therefore without basis in fact.

Four

Failure of the local board to make a full summary of oral evidence given by Dickinson upon personal appearance about his change in status deprived petitioner of a full and fair hearing before the appeal board, which was not cured by later letters to the National Headquarters of the Selective Service System.

The regulations require that the local board reduce to writing and place in the registrant's file all oral evidence submitted by him pertaining to his occupational status and classification.

> "The registrant's classification shall be determined solely on the basis of the official forms of the Selective Service System and such other written information as may be contained in his file; . . .

> Since it is imperative that appeal agencies have available to them all information on which the local board determined the registrant's classification, oral information shall not be considered unless it is summarized in writing and the summary placed in the registrant's file. Under no circumstances shall the local board rely upon information received by a member personally unless such information is reduced to writing and placed in the registrant's file. . . ."—Section 1623.1(b); see also Section 1624.2(b).
>
> "If any facts considered by the local board do not appear in the written information in the file, the local board shall prepare and place in the file a written summary of such facts."—Section 1626.13 (a).

Section 1626.13(a) of the regulations required the local board to "carefully check the registrant's file to make certain that all steps required by the regulations have been taken and that the record is complete." The local board disregarded the regulations and acted in complete defiance thereof, thus flouting the law and showing utter contempt for Dickinson's right under the regulations.

The regulations intend that the classification upon appeal shall be *de novo*. The board of appeal and the National Selective Service Appeal Board do not have an opportunity to permit the registrant to appear before them personally; they are confined in their consideration to the record made in writing. If the local board did not comply with the regulations requiring it to make a full record of all the facts and evidence considered by it, the appeal agency of the Selective Service System would be entirely at the mercy of the local board. If a record was not made of all the facts and evidence that properly entered into the judgment of the local board, then the board of appeal would not be in as good position to pass on the case as was the local board.

The regulations contemplate that the local board shall make a record of all the evidence considered by it so that the board of appeal shall be in equally as good a position to pass upon the classification of a registrant as the local board.

This is the precise question that was presented to this Court in the case of *Estep* v. *United States*, 150 F. 2d 768, 327 U. S. 114. However, in spite of the fact that the Court did not pass upon the merits of such defense, the two dissenting judges of the court of appeals exhaustively reviewed the law in this connection. Reference is made to their opinions.—150 F. 2d 768, 773-781 (3rd Cir.)

Since the board of appeal has the final say as to the classification to be accorded a registrant, it must be assumed that the authors of the act and regulations intended that the local board, in all cases where appeals were taken by the registrants, should perform a duty in behalf of the board of appeal very much like a master, referee or notary public taking a deposition. It is the function of the local board to gather all the evidence for consideration by the board of appeal or the National Selective Service Appeal Board, which appellate agencies pass on all questions involved. If it were otherwise, so that the local board could withhold evidence, written documentary or oral, from the registrant's file forwarded to the board of appeal, the local board would have unlimited powers and arbitrary discretion to determine just what evidence the appellate agencies should or should not consider under Section 1623.1 of the regulations. Thus the authority of the appellate agencies could be circumscribed and their power sapped by whimsical actions of the local board.

The principle announced by the United States Court of Appeals for the Sixth Circuit in *Niznik* v. *United States*, 173 F. 2d 328, is not apropos. The distinction between the facts of that case and the facts of this case, warranting the rejection of the principle announced, is that the papers in the draft board file in this case did not cover the oral evi-

dence given upon the occasion of Dickinson's personal appearance. He gave new and additional testimony over and above the evidence appearing in the written parts of his file in reference to (1) his quitting secular work, (2) his having a congregation and presiding over it, (3) his full-time ministry, (4) his devoting only five hours per week to secular work, (5) his training for the ministry, (6) his pursuit of the ministry as his vocation, and (7) other factors and issues not involved in the written material. [59-81]

The new and additional evidence offered by Dickinson upon the hearing of September 7, 1950, which was not in the written parts of the file and which was not reduced to writing as required by the regulations, is here briefly summarized. He said he was a full-time ordained minister of the gospel, that he was sincere, that he had a congregation of persons whom he served as a minister, that he had dedicated his life to Almighty God, and that in accordance with his commission and ordination by the Almighty, as stated at Isaiah 61:1-3, he entered into a covenant or agreement to do the will of Jehovah God by thus taking active part in preaching this gospel of the Kingdom in all the world for a witness unto all nations before the end of this world comes. (Matthew 24:14) He also stated that, as a minister, he helped in giving spiritual aid and comfort to people of good will by calling back on those interested persons and endeavoring to start home Bible studies with them, for their spiritual enlightenment and blessing in the truth. [59-81]

In *United States* v. *Zieber*, 161 F. 2d 90 (3rd Cir.), it was held that when new information was submitted it was the duty of the local board to reduce to writing all new information submitted by the registrant. In that case the court reversed and remanded the case for a new trial. This apparently was because the court was of the opinion that the conflict between the testimony of the defendant and the clerk of what actually took place at the local board presented an issue of fact which made that case one strictly for the jury.

But the principle established in the *Zieber* decision warrants the entry of a judgment of acquittal here because the facts in reference to what transpired before the local board are undisputed. This is supported by the decision of Judge McVicar, in *United States* v. *Garvin*, 71 F. Supp. 545 (W. D. Pa.). Among other things the court said:

> "Defendant, David Wilfred Garvin, Jr., was indicted in this Court for knowingly failing to submit to induction into the Armed Forces of the United States, October 7, 1946 as required under the Selective Training and Service Act of 1940, as amended. To this charge he pleaded 'Not Guilty'....
>
> "The evidence discloses that the defendant on two or more hearings before the Local Board, gave oral evidence at length relating to his status as a minister of religion. This evidence was considered by the Local Board in making its classification as appears from the uncontradicted evidence of the Chairman of the Board. Not any of the oral evidence taken by the Local Board, or a summary thereof, was sent to the Appeal Board. The Board of Appeal, therefore, acted upon the classification of the defendant without having all the evidence before it, which was received and considered by the Local Board in making its classification of the defendant. The result is that defendant did not have a fair hearing and he was denied due process of law. . . .
>
> "The foregoing opinion was written but not filed prior to the decision of the Third Circuit Court of Appeals handed down April 28, 1947, in the case of *United States* v. *Zieber, Jr.* . . .
>
> "In the above case there were 'disputed fundamental questions of fact' relating to the testimony which Zieber stated he offered to the Local Board. In the present case there were no disputed ques-

> tions of fact. The uncontradicted testimony of the defendant and of the Chairman of the Local Board was to the effect that Garvin did testify orally before the Local Board; that said testimony was considered by the Local Board; that it, nor a summary thereof, was not reduced to writing and filed and hence was not sent to the Board of Appeal for its consideration."—Pp. 545, 548, 549.

Therefore the judgment below should be reversed and the indictment ordered discharged because the action of the local board in failing to comply with the regulations requiring a reduction of the evidence received by it to writing was contrary to the regulations which made the order "lawless and beyond its jurisdiction."—*Estep* v. *United States*, 327 U. S. 114, 121; *United States* v. *Zieber*, 161 F. 2d 90, 93 (3rd Cir.).

The statement is made by the court below [130-131] that Mrs. Brock, clerk of the local board, disputed the testimony of Dickinson that he gave new and additional testimony. This statement by the court below is unfounded. It finds no support in the record. The footnote on page eight of the Government's brief filed in the court below proves the contrary. It shows that the clerk was called by the Government as its witness and that she was not questioned on this point. The failure of the Government to question the clerk on this point or develop contradicting testimony by her leaves the case with a presumption that her testimony, if given, would have sustained the testimony of Dickinson rather than contradict it. [96-97]

The record in this case is in the same shape on this point as was the record of the second *Niznik* appeal. On the first appeal the judgment was reversed to give the Government an opportunity on a new trial to call the draft officials. On the second trial the draft board members failed to contradict the testimony of the defendants. The court

on the second appeal reversed the conviction and dismissed the indictment because the uncontradicted testimony of the appellants established a violation of procedural due process by the local board.—See *Niznik* v. *United States*, 184 F. 2d 972 (6th Cir.). Compare *Niznik* v. *United States*, 173 F. 2d 328 (6th Cir.).

The fact that the National Selective Service Appeal Board had, as stated by the court below [132], a letter from Dickinson in his file giving a memorandum of the oral evidence to it does not cure the omission. It should be remembered that, while the omission did not prejudice Dickinson before the National Selective Service Appeal Board, it did harm him before the district appeal board. We cannot speculate on whether or not the omission to make the memorandum harmed Dickinson before the district appeal board. Judge Kaufman in *United States* v. *Romano*, 103 F. Supp. 597 (S. D. N. Y. 1952), said:

> "I do not intend to lose myself in conjectures of what might have happened had defendant had his post-classification hearing for, indeed, this would be out of the realm of reasonableness. It is sufficient to the disposition of the case before me that I find as a matter of law that defendant was deprived of the right which belongs to every citizen, due process of law."—P. 600.

It is respectfully submitted that the fact that the National Selective Service Appeal Board had a complete record before it and that it made a *de novo* classification did not cure the violation of procedural due process by the local board which injured Dickinson before the district appeal board.

There is absolutely no dispute in the evidence as to what took place before the local board on the occasion that Dickinson appeared before it. Therefore the evidence is undisputed that he offered "new information." The evidence is

further undisputed that the local board failed to reduce to writing this "new information" and send it to the district appeal board. There being undisputed evidence showing that there was a violation of the regulations by the local board, it was the duty of the court below to find that the order supporting the indictment was lawless and void.

It is respectfully submitted that the failure of the local board to make a full and fair résumé or summary of the new oral evidence given on matters not appearing in the file violates Section 1624.2(b) of the regulations. The violation was harmful to Dickinson before the appeal board and was not cured by any later letters requesting an appeal to the National Selective Service Appeal Board.

CONCLUSION

Petitioner is exempt from all training and service. This is because he is entitled to be classed either as an ordained minister or a regular minister of religion. It appears that his ministry is his vocation.

The primitive preaching methods of petitioner do not deprive him of his exemption. They cannot be ruled out from under the law by comparison with other methods. The draft law left it up to petitioner's religion to choose his method of preaching. This choice is within the wide range expressed in the law itself.

Orthodoxy of other religions cannot be written into the law by the Government or the Court. Petitioner's method of preaching cannot be questioned. It has the same high level under the law as does the preaching of the orthodox clergy.

The courts below ruled erroneously. They failed to hold that the denial by the draft boards of the exemption was arbitrary, capricious and without basis in fact. They also failed to hold that the local board illegally deprived petitioner of a full and fair hearing before the district ap-

peal board by failing to make a summary of the new and additional oral evidence given by petitioner. The courts below should be instructed that the motion for judgment of acquittal ought to be granted. The conviction and the judgment of affirmance, therefore, must be reversed.

Respectfully,

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